United States Court of Appeals

for the Second Circuit

APPENDIX

No. 76-6052

United States Court of Appeals

FOR THE SECOND CIRCUIT

B

P/S

SAMUEL M. KAYNARD, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

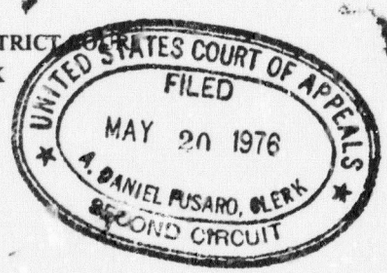
Petitioner-Appellant,

v.

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK



APPENDIX

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APPENDIX

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SAMUEL M. KAYNARD, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* v. LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondent.*	75 Civil 1173

* * * * *

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Case Of: Samuel Kaynard v. Local 814, IBT

Case No. 76-6052

DATE	
7.22.75	Complaint filed, Summons issued.
7.24.75	Answer filed.
7.24.75	Memorandum of points and authorities in support of petition filed.
7.24.75	Order to show cause.
7.25.75	Respondent's prehearing memorandum of law filed.
7.25.75	Case called. Motion adjourned to 9-26-75.
7.26.75	Case called. Order to show cause adjourned to 10-3-75.
10. 3.75	Case called. Adjourned to 10-10-75.
10. 9.75	Stipulation on order dated 10-6-75 re: exhibits introduced at the unfair labor practice hearing, etc., filed.
10.10.75	Case called. Motion submitted. Decision reversed.
10.20.75	Memorandum of points and authorities filed.

DATE	
10.21.75	Respondent's memorandum in opposition to the petition filed.
2. 4.76	Memorandum and order denying injunctive relief filed.
2.10.76	Letter from Respondent re: dismissing of complaint by Administrative Law Judge filed.
3. 9.76	Notice of appeal filed.

[July 22, 1975]

* * * * *

PETITION FOR INJUNCTION UNDER SECTION 10(1)
OF THE NATIONAL LABOR RELATIONS ACT,
AS AMENDED

To the Honorable, The Judges of the United States District Court for the Eastern District of New York:

Comes now Samuel M. Kaynard, Regional Director of Region 29 of the National Labor Relations Board, herein called the Board, and petitions this Court for and on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160(1); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on charges, alleging, *inter alia*, that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii) subsections (A) and (B) of the Act, and Section 8(e) of the Act. In support thereof petitioner respectfully shows as follows:

1. Petitioner is Regional Director of Region 29 of the Board, an agency of the United States, and files this petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(1) of the Act.

3. Pursuant to provisions of the Act, Bader Brothers Warehouses, Inc., herein called Bader, filed charges with the Board on June 27, 1975, alleging, *inter alia*, that respondent, a labor organization, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii), subsections (A) and (B) and Section 8(e) of the Act. Copies of said charges are attached hereto as Exhibits 1 and 2 and made a part hereof.

4. The aforesaid charges were referred to petitioner as Regional Director of Region 29 of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true and that a Consolidated Complaint of the Board based on said charges should issue against respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that respondent is a labor organization within the meaning of Section 2(5), 8(b) and 10(1) of the Act, and that said respondent has engaged in, and is engaging in, acts and conduct in violation of Sections 8(b)(4) and (ii), subsections (A) and (B) and Section 8(e) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 33-01 38th Avenue, Long Island City, New York, and at all times material herein, has been engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(c) Bader, a New York Corporation, until on or about March 26, 1975, maintained its principal office and place of business at 475 Underhill Blvd., Syosset, New York, herein called the Syosset facility. Since on or about March 26, 1975, Bader has maintained its principal office and place of business at 22 Reed Drive, Roslyn, New York, and has continued to occupy the Syosset facility for the purpose of winding up its business affairs. Until on or about March 26, 1975, Bader was engaged in the warehousing of household goods and other commodities and in the transportation of said goods and commodities in interstate commerce. During the past year, Bader, in the course and conduct of its business, derived gross revenues in excess of

$500,000, of which gross revenues in excess of $50,000 was derived from the transportation of household goods and other commodities across state lines in interstate commerce.

(d) Golden Cycle Van Lines of New York, Inc., herein called Golden Cycle, a New York corporation, maintains its principal office and place of business at 475 Underhill Blvd., Syosset, New York, where it is engaged in the warehousing of household goods and other commodities and in the transportation of said goods and commodities in interstate commerce. Golden Cycle is a subsidiary of the Golden Cycle Corporation and is operated in connection with Greyhound Van Lines, Inc., Smythe Worldwide Movers and Greyhound Storage, Inc. During the past year, Golden Cycle, in the course and conduct of its business, derived gross revenues in excess of $500,000, of which gross revenues in excess of $50,000 was derived from the transportation of household goods and other commodities across state lines in interstate commerce.

(e) At all times material herein, Bader and respondent have been parties to a collective bargaining agreement, effective from April 1, 1974 to and including March 31, 1977, relating to the terms and conditions of employment of the employees of Bader, covering a collective bargaining unit consisting of all chauffeurs, warehousemen, packers, hi-lo operators, checkers and helpers employed by Bader.

(f) The agreement described in subparagraph (e) above contains the following clause:

ARTICLE 50. PARTIES BOUND

A. This Agreement shall be binding upon the Union and such Employers who are either certified by the Association parties hereto as members of such Associations, who have agreed to be bound by the terms of this Agreement, or individual Employers who

executed an individual agreement binding themselves to the terms of this Agreement.

B. This Agreement shall also be binding upon the successors, administrators, executors and assigns of the parties either signatory hereto, or who are by membership in an Association as above set forth bound to the terms hereof. *In the event an entire operation or part thereof, is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceeding, such operation or part of an operation shall continue to be subject to the terms and conditions of this Agreement during the term hereof. On the sale, transfer or lease the specific provisions of this Agreement shall prevail.* It is understood that the parties hereto shall not use any leasing device to a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc. of the operation covered by this Agreement, or any part thereof. Such notice shall be in writing and a copy served upon the Union at the time the seller, transferor or lessor executes a contract or transaction as herein described. The union shall also be advised of the exact nature of the transaction excluding financial details. *In the event the Employer fails to require the purchaser, transferee or lessee to assume the obligations of this Agreement, the Employer shall be liable to the Union, and to the employees covered, for all damages sustained as a result of such failure to require assumption of the terms of this Agreement;* but shall not be liable after the purchaser, transferee or lessee has agreed in writing to assume the obligation of this Agreement.

(g) Pursuant to the clause of the agreement described in subparagraph (f) above, Bader has ceased or refrained, and has agreed to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in the products of other employers or from doing business with other persons.

(h) Respondent and Bader, on dates within 6 months prior to the filing of the charge herein, are continuing to maintain and give effect to and enforce the collective bargaining agreement containing the clause set forth above in subparagraph (f).

(i) On or about September 1, 1974, Bader leased its Syosset facility to Golden Cycle for a period of ten years, and sold various of its assets, including office equipment, warehouse equipment, repair shop furniture, truck repair and maintenance shop equipment and trucks and trailers to Golden Cycle, said sale and lease to be effective on or about March 26, 1975. However, Bader continued to occupy said Syosset facility for the purpose of winding up its business affairs.

(j) At all times material herein, respondent has been engaged in a dispute with Bader because Bader failed to require Golden Cycle to assume the obligations of the collective bargaining agreement described above in subparagraph (f).

(k) On or about March 18, March 19 and March 20, 1975, respondent demanded of Golden Cycle that pursuant to respondent's agreement with Bader described above in subparagraphs (e) and (f) that Golden Cycle assume the obligations of said agreement described above in subparagraph (e).

(l) On or about March 21, 1975, respondent attempted to require Bader to enforce and implement the collective bargaining agreement described above in subparagraph (e) containing the clause described above in subparagraph (f) by demanding that Bader require Golden Cycle to assume the obligations of respondent's collective bargaining agreement with Bader described above in subparagraph (e).

(m) On or about March 25, 1975, Bader terminated its employees covered by the collective bargaining agreement described above in subparagraph (e) and terminated its operations described above in subparagraph (c). However, Bader continues to occupy the Syosset facility for the purpose of winding up its business affairs.

(n) In furtherance of its demands upon Bader and Golden Cycle as described above in subparagraphs (k) and (l), and in order to enforce and implement that clause of its collective bargaining agreement with Bader, described above in subparagraph (f), respondent, on or about March 26, 1975, authorized and established a picket line, and since on or about March 26, 1975, respondent has picketed and caused to be picketed Bader and Golden Cycle at their Syosset facility.

(o) In furtherance of its demands upon Bader as described above in subparagraph (l) and in order to enforce that clause of its collective bargaining agreement with Bader, described above in subparagraph (f), respondent, on or about March 26, 1975, demanded pursuant to the collective bargaining agreement described above in subparagraph (e), that Bader submit to arbitration concerning its failure to abide by that clause of its collective bargaining agreement described above in subparagraph (f).

(p) By the acts and conduct of respondent as set forth in subparagraphs (e), (f), (g), (h), (k), (l), (n) and (o), and by each of said acts, respondent engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(e) and Section 2(6) and (7) of the Act.

(q) By the acts and conduct set forth in subparagraph (p) above, and by other means, including orders, directions, instructions, requests and appeals, respondent has engaged in, and has induced and encouraged individuals employed by Golden Cycle, Bader and by other persons engaged in commerce or industries affecting commerce, to engage in strikes and refusals in the

course of their employment to use, manufacture, process, transport and otherwise handle and work on any goods, articles, materials and commodities and to perform services.

(r) By the acts and conduct set forth in subparagraphs (k), (l), (n) and (o), and by other means, respondent has threatened, coerced and restrained Bader, Golden Cycle and other persons engaged in commerce or in industries affecting commerce.

(s) An object of the acts and conduct of respondent set forth in subparagraphs (k), (l), (n), (o), (p), (q) and (r) above, was and is to force or require Bader to enter into an agreement prohibited by Section 8(e) of the Act.

(t) An object of the acts and conduct of respondent set forth in subparagraphs (k), (n), (p), (q) and (r) above, was and is to force and require Golden Cycle and other persons to cease doing business with Bader.

6. It may be fairly anticipated that unless enjoined, respondent will continue to repeat the acts and conduct set forth in paragraph 5, subparagraphs (k), (l), (n), (o), (p), (q) and (r) above, or like acts and conduct in violation of Section 8(b)(4)(i)(ii), subsections (A) and (B) of the Act, and respondent will continue to maintain and give effect to the contract clause referred to in subparagraphs (e) and (f) above, or enter into similar or like contract clauses or agreements in violation of Section 8(e) of the Act. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(l) thereof that, pending final disposition of the matters involved herein pending before the Board, respondent be enjoined and restrained from the commission of the acts and conduct, or repetition thereof, and from entering into, maintaining, giving effect to, or enforcing, the contract clause and agreements referred to in subparagraphs (e) and (f) above, and from entering into any other similar contract clause or agreements.

7. No previous application has been made for the order or relief herein sought.

WHEREFORE, petitioner prays:

1. That the Court issue and order directing respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it, pending the final disposition of the matters involved herein pending before the Board, from:

(A) Maintaining, giving effect to or enforcing contracts, by arbitration or other means, entered into by respondent and Bader Brothers Warehouse, Inc., or any other person or employer engaged in commerce or in an industry affecting commerce, insofar as said contracts provide that:

ARTICLE 50. PARTIES BOUND

A. This Agreement shall be binding upon the Union and such Employers who are either certified by the Association parties hereto as members of such Associations, who have agreed to be bound by the terms of this Agreement, or individual Employers who executed an individual agreement binding themselves to the terms of this Agreement.

B. This Agreement shall also be binding upon the successors, administrators, executors, and assigns of the parties either signatory hereto, or who are by membership in an Association as above set forth bound to the terms thereof. In the event an entire operation or part thereof, is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceeding,

such operation or part of an operation shall continue to be subject to the terms and conditions of this Agreement during the term hereof. On the sale, transfer or lease the specific provisions of this Agreement shall prevail. It is understood that the parties hereto shall not use any leasing device to a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, leasee, assignee, etc. of the operation covered by this Agreement, or any part thereof. Such notice shall be in writing and a copy served upon the Union at the time the seller, transferor or lessor executes a contract or transaction as herein described. The union shall also be advised of the exact nature of the transaction excluding financial details. In the event the Employer fails to require the purchaser, transferee or lessee to assume the obligations of this Agreement, the Employer shall be liable to the Union, and to the employees covered, for all damages sustained as a result of such failure to require assumption of the terms of this Agreement; but shall not be liable after the purchaser, transferee or lessee has agreed in writing to assume the obligation of this Agreement.

(B) Any and all picketing at the facility lacoated at 475 Underhill Blvd., Syosset, owned by Bader Brothers Warehouses, Inc., and leased to Golden Cycle Van Lines of New York, Inc.

(C) In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to

remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Bader, or by any other employer or person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or in any manner or by any means, threatening, coercing, or restraining Bader, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Bader to enter into an agreement which is prohibited by Section 8(e) of the Act.

(D) In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however, given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in or inducing or encouraging any individual employed by Golden Cycle Van Lines of New York, Inc., or by any other employer or person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service, or in any manner or by any means, threatening, coercing or restraining Golden Cycle, or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Golden Cycle to cease doing business with Bader, or any other employer or person.

2. That upon return of said order to show cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

Dated at Brooklyn, New York, this 22nd day of July, 1975.

/s/ Samuel M. Kaynard

Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street, Brooklyn, New York
11241

PETER G. NASH
General Counsel

JOHN S. IRVING
Deputy General Counsel

HAROLD L. RICHMAN
Regional Attorney, Region 29

HAROLD R. WEINRICH
Attorney, Region 29

NATIONAL LABOR RELATIONS BOARD
16 Court Street
Brooklyn, New York 11241
596-3535; 596-3312

BEST COPY AVAILABLE

FORM NLRB-508 (4-72)

Form Approved
O.M.B. No. 64-R0003

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CC-476

Date Filed 6-27-75

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America	Vincent Bracco Eugene Friedman, Esq.	392-4510 MU2-6077

d. Address (Street, city, State and ZIP code)
33-01 38th Avenue, Long Island City, New York

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 8(b)(4)(A)(B) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about December 27, 1974, the above-named labor organization and its agents have threatened, coerced, or restrained Bader Brothers Warehouses, Inc., a person engaged in commerce or in an industry affecting commerce, where an object thereof is forcing or requiring the Company to enter into, reaffirm and comply with an agreement which is prohibited by Section 8(e) or forcing or requiring the said Company to cease doing business with another person.

3. Name of Employer	4. Phone No.
Bader Brothers Warehouses, Inc.	
5. Location of Plant Involved (Street, city, State and ZIP code) 475 Underhill Boulevard, Syosset, New York, The Company's mailing address is now 22 Reed Drive, Roslyn, New York 11576.	6. Employer Representative to Contact
7. Type of Establishment (Factory, mine, wholesaler, etc.) Moving & Storage Company	8. Identify Principal Product or Service Moving and storage of household goods.
	9. No. of Workers Employed
10. Full Name of Party Filing Charge Bader Brothers Warehouses, Inc.	
11. Address of Party Filing Charge (Street, city, State and ZIP code) 22 Reed Drive, Roslyn, New York 11576	12. Telephone No. 339-1470

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Attorney
(Signature of representative or person making charge) (Title or office, if any)

Address 460 5th Avenue, ~~New York, New York 10017~~ 889-1470 June 27, 1975
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 863 [illegible]

FORM NLRB-501 (2-68)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R003.2

CHARGE ALLEGING UNFAIR LABOR PRACTICE UNDER SECTION 8(e) OF THE ACT

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

CASE NO. 29-CE-33

DATE FILED 6-27-75

1. CHARGE FILED AGAINST: EMPLOYER AND LABOR ORGANIZATION ☐ EMPLOYER ☐ LABOR ORGANIZATION ☒

a. NAME OF LABOR ORGANIZATION (Give full name, including local name and number)
Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

ADDRESS (Street and number, City, State and Zip Code)
33-01 30th Avenue, Long Island City, New York

NAME OF EMPLOYER

LOCATION OF PLANT INVOLVED (Street, City, State, and Zip Code)

TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)	IDENTIFY PRINCIPAL PRODUCT OR SERVICE	NO. OF WORKERS EMPLOYED

THE ABOVE-NAMED LABOR ORGANIZATION OR ITS AGENTS, AND/OR EMPLOYER HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(e) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, plants involved, dates, places, etc.)

Since on or about December 27, 1974, the above-named labor organization has entered into, maintained, reaffirmed and sought to enforce contracts or agreements, express or implied, with Bader Brothers Warehouses, Inc., Affiliated Moving Van Owners, Inc., its members and other employers and employer associations within the moving and storage industry, whereby such employers cease or refrain or agree to cease doing business with other persons.

3. FULL NAME OF PARTY FILING CHARGE (If labor organization, give full name, including local name and number)
Bader Brothers Warehouses, Inc.

4. ADDRESS (Street and number, City, State, and Zip Code)
[illegible] Vanderbilt Boulevard, Syosset, New York. The Company's mailing address is now 22 Reed Drive, Roslyn, New York 11575.

TELEPHONE NO.
389-1470

5. FULL NAME OF NATIONAL OR INTERNATIONAL LABOR ORGANIZATION OF WHICH IT IS AN AFFILIATE OR CONSTITUENT UNIT (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

[signature] 389-1470
(Signature of representative or person making charge)

June 27, 1975 (Date)

Attorney (Title)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 880-742

STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

I, SAMUEL M. KAYNARD, being first duly sworn, depose and say that I am Regional Director of Region 29 of the National Labor Relations Board; that I have read the foregoing petition and know the contents thereof; that the statements therein made as upon personal knowledge are true and those made as upon information and belief I believe to be true.

/s/ Samuel M. Kaynard
Samuel M. Kaynard

Subscribed and sworn to before me
this day of July, 1975.

/s/ Joel H. Friedman
Joel H. Friedman
Notary Public, State of New York
No. 31-6413650
Qualified in New York County
Commission Expires March 30, 1976.

[July 23, 1975]

* * * * *

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Respondent Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by its attorneys Cohen, Weiss and Simon, for its Answer to the petition herein, respectfully alleges:

1. Admits the allegations in paragraphs 1, 2, 3, 4, 5(a), (b), (e), (f), and 7 of the petition.

2. Denies the allegations in paragraph 5 of the petition, except admits that respondent is a labor organization within the meaning of the Act.

3. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in paragraphs 5(c), (d), and (i) of the petition.

4. Denies the allegations in paragraphs 5(g), (h), (p), (q), (r), (s), (t), and 6 of the petition.

5. Denies the allegations in paragraph 5(j) of the petition, except admits that respondent has been engaged in a dispute with Bader Brothers, the nature of said dispute being set forth in a telegram dated March 20, 1975 from respondent to Bader Brothers, and respectfully refers to said telegram for the contents thereof. A copy of said telegram is annexed hereto as Exhibit A.

6. Denies the allegations contained in paragraph 5(k) of the petition, except admits that respondent has a dispute with Golden Cycle, the nature of said dispute being set forth in a telegram dated March 20, 1975 from respondent to Golden Cycle and respectfully refers to said telegram for the contents thereof. A copy of said telegram is annexed hereto as Exhibit B.

7. Repeats and realleges the allegations in paragraph 5 of this Answer.

8. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5(m) of the petition,

except admits that on or about March 25, 1975 Bader Brothers terminated its employees covered by its collective bargaining agreement with the respondent.

9. Denies the allegations in paragraph 5(n) of the petition, except admits that on various dates since on or about March 25, 1975, respondent picketed Bader Brothers and Golden Cycle at their Syosset facility.

10. Denies the allegations in paragraph 5(o) of the petition, except admits that respondent and Bader Brothers entered into a Stipulation agreeing to the arbitration of the disputes between them and respectfully refers to said Stipulation for the contents thereof. A copy of said Stipulation is annexed hereto as Exhibit C.

WHEREFORE, respondent respectfully requests that the petition herein be dismissed and that the Court grant such other and further relief as it may deem just and proper.

COHEN, WEISS and SIMON

By /s/ Eugene S. Friedman
(A Member of the Firm)

605 Third Avenue
New York, New York 10016
(212) 682-6077

Attorneys for Respondent

DATED: New York, New York
July 23, 1975

telegram

NO. WDS. - CL. OF SVC.	P.O. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	☐ OVER NIGHT TELEGRAM
			C N Y 025250	UNLESS YOU ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM

Send the following message, subject to the terms on back hereof, which are hereby agreed to

MARCH 20, 1975

TO BADER BROS., INC.

CARE OF OR APT. NO.

STREET AND NO. 475 UNDERHILL BLVD.

TELEPHONE

CITY AND STATE SYOSSETT, N.Y. 11791

ZIP CODE

WE HAVE LEARNED THAT YOU INTEND TO SELL OR HAVE SOLD YOUR OPERATION TO GOLDEN CYCLE VAN OF NEW YORK, INC. IN ACCORDANCE WITH THE TERMS OF YOUR COLLECTIVE BARGAINING AGREEMENT WITH THIS UNION YOU ARE REQUIRED AMONG OTHER THINGS TO GIVE NOTICE OF EXISTENCE OF THIS AGREEMENT TO GOLDEN CYCLE IN WRITING WITH A COPY OF SAID NOTICE TO BE SERVED UPON THE UNION AND THE EXACT NATURE OF YOUR TRANSACTION WITH GOLDEN CYCLE EXCLUDING FINANCIAL DETAILS. YOU HAVE NOT DONE SO, AND WE DEMAND THAT YOU DO SO IMMEDIATELY. YOU MUST ALSO REQUIRE GOLDEN CYCLE TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT. YOU HAVE NOT DONE SO AND WE DEMAND THAT YOU DO SO IMMEDIATELY. IF YOU FAIL TO REQUIRE GOLDEN CYCLE TO ASSUME

SENDER'S TEL. NO. NAME & ADDRESS

telegram

NO. WDS. - CL. OF SVC.	P.O. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	☐ OVER NIGHT TELEGRAM
				UNLESS BOX ABOVE IS CHECKED THIS

Send the following message, subject to the terms on back hereof, which are hereby agreed to

TO

CARE OF OR APT. NO.

STREET AND NO.

TELEPHONE

CITY AND STATE

ZIP CODE

THE OBLIGATIONS OF SAID AGREEMENT YOU WILL BE HELD LIABLE TO THE UNION AND THE EMPLOYEES FOR ALL DAMAGES SUSTAINED AS A RESULT OF YOUR FAILURE TO REQUIRE ASUMPTION OF THE TERMS OF THIS AGREEMENT AND THE UNION SHALL TAKE WHATEVER LAWFUL ACTION IT DEEMS NECESSARY TO PROTECT ITS MEMBERS AND THE INTEGRITY OF ITS CONTRACT.

(SIGNED) VINCENT BRACCO, PRESIDENT
LOCAL 814, I.B.T.

SENDER'S TEL. NO. NAME & ADDRESS

EXH. A

Telegram

			CHARGE TO THE ACCOUNT OF	[ ] OVER NIGHT TELEGRAM
				UNLESS BOX ABOVE IS CHECKED T... MESSAGE WILL BE SENT AS A TELEGR...

...ubject to the terms on back hereof, which are hereby agreed to

MARCH 20, 1975

TO WILLIAM CROSS, GOLDEN CYCLE VAN OF N.Y., INC. CARD OR APT. NO.

STREET & NO. 475 UNDERHILL BLVD. TELEPHONE

CITY & STATE SYOSSETT, N.Y. 11791 ZIP CODE

WE UNDERSTAND YOU ARE PURCHASING AND TAKING OVER THE OPERATION OF BADER BROS., INC. THIS UNION HAS A COLLECTIVE BARGAINING AGREEMENT WITH BADER BROS., INC. COVERING THE OPERATION YOU ARE PURCHASING AND TAKING OVER. PURSUANT TO ARTICLE 50 OF SAID AGREEMENT ENTITLED, PARTIES BOUND, WE DEMAND THAT YOU AGREE IN WRITING TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT. PLEASE NOTIFY THE UNDERSIGNED PROMPTLY IN WRITING THAT YOU ASSUME OBLIGATIONS OF SAID AGREEMENT. YOUR FAILURE TO DO SO WILL COMPEL THE UNION TO TAKE WHATEVER LAWFUL ACTION IS NECESSARY TO PROTECT OUR MEMBER AND THE INTEGRITY OF OUR CONTRACT.

(SIGNED) VINCENT BRACCO, PRESIDENT
LOCAL 814, I.B.T.

SENDER'S TEL. NO. NAME & ADDRESS

WU 1107 (R 5-69)

STIPULATION

Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "Union"), by letter dated March 26, 1975, filed a grievance claiming a violation by Bader Brothers Warehouses, Inc. ("Bader") of the 1974-1977 Collective Labor Agreement between the Union and Movers and Warehousemen's Association of Greater New York, Inc. and others (the "Agreement"); and

In lieu of submitting this dispute for final and binding determination to the Moving and Storage Joint Labor-Management Board (the "Joint Board") and/or the Impartial Chairman, as provided by the Agreement, the parties have agreed instead that it shall be submitted to arbitration under the rules and regulations of the American Arbitration Association or to any other forum mutually agreed upon by the parties,

NOW, THEREFORE,

IT IS STIPULATED AND AGREED:

1. The Joint Board and Impartial Chairman hereby divest themselves of any and all powers which they might have had to determine the grievance stated below under the provisions of the Agreement in view of the parties' agreement to substitute the following procedure for determination of the said grievance.

2. The parties submit the following questions for final and binding arbitration under the rules and regulations covering such disputes of the American Arbitration Association:

> Has Bader violated the Agreement, as contended by the Union, by failing to give notice of the Agreement to Golden Cycle Van of New York, Inc. in writing with a copy to the Union, to advise the Union of the exact nature of the transaction excluding financial details and to require Golden Cycle to assume the obligations of the Agreement?

If so, what remedy authorized by the Agreement shall be granted?

3. The arbitrator shall be selected by the parties in the prescribed manner from lists prepared by the American Arbitration Association or by any other procedure mutually agreed upon by the parties.

4. It is understood that the parties by entering into this stipulation do not intend to waive any argument or defense to which they might have been entitled under the Agreement.

Dated: New York, New York
May 7, 1975

COHEN, WEISS & SIMON

By signature illegible
Attorneys for Local 814, IBT

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN

By signature illegible
Attorneys for Bader Bros. Warehouses, Inc.

BRODSKY, LEVETT & ALTMAN

By signature illegible
Attorneys for the Employer Associations under the Agreement

JOINT BOARD

By signature illegible

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

COHEN. WEISS AND SIMON

Attorneys for

Office and Post Office Address

605 THIRD AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10016

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

COHEN. WEISS AND SIMON

Attorneys for

Office and Post Office Address

605 THIRD AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10016

To

Attorney(s) for

Index No. 75 Civil 1173 Year 19 75

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NEW YORK

SAMUEL M. KAYNARD, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner,

v.

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

ANSWER

COHEN. WEISS AND SIMON

Attorneys for

Office and Post Office Address, Telephone

605 THIRD AVENUE

BOROUGH OF MANHATTAN NEW YORK, N. Y. 10016

MURRAY HILL 2-6077

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

1500—© 1973, JULIUS BLUMBERG, INC., 80 EXCHANGE PLACE, N.Y. 10004

TRANSCRIPT OF PROCEEDING

* * * * *

United States Courthouse
Brooklyn, New York

July 25, 1975

Before:

HONORABLE MARK A. COSTANTINO, U.S.D.J.

RAYMOND STALKER
ACTING OFFICIAL COURT REPORTER

2 Appearances:

ALVIN BLYER, ESQ.
For the Petitioner

COHEN, WEISS & SIMON, ESQ.
For the Respondents

BY: EUGENE S. FRIEDMAN, ESQ.

ARANOW, BRODSKY, BOHLINGER, BENETAR &
EINHORN, ESQ.

BY: STANLEY SCHAIR, ESQ.

3 THE CLERK: Civil motion, Kaynard versus Local 814, International Brotherhood of Teamsters.

MR. FRIEDMAN: Your Honor, I was having a brief discusssion with counsel outside.

I wonder if we can beg the Court's indulgence for a moment?

THE COURT: We will take a recess for a few moments.

MR. FRIEDMAN: How long did you say?

THE COURT: Whenever you're ready.

(Whereupon, a short recess was taken.)

MR. BLYER: Your Honor, on behalf of the petitioner, National Labor Relations Board, I would like to say that the parties have been talking and I think we have an amicable settlement.

The case does not have to be heard at this time.

THE COURT: All right.

MR. BLYER: I think the parties agree to withdraw all the picketing and to cease and desist from picketing.

Secondly, at this point, not to proceed with the arbitration that is now pending and the parties will agree that should respondent union breach its commitment that the petitioner may proceed forthwith under 10-L, and lastly,

4 your Honor, that we ask at this time that you postpone the 10-L proceeding to some time in late September, 1975, so the parties in the interim can see if the matter can be resolved completely.

THE COURT: We will suspend it to September 26, Friday.

MR. BLYER: That will be fine.

MR. FRIEDMAN: If your Honor pleases, on behalf of the respondent I would like to say respondent is agreeable to this settlement, let me call it.

And the charging party, Batter Brothers, will be interested in negotiating and trying to resolve the underlying dispute.

If we are unsuccessful in resolving the underlying dispute we shall continue picketing.

This is an agreement and not an injunction.

THE COURT: It is a stipulation and agreement between the parties.

MR. BLYER: Thank you for your time.

MR. FRIEDMAN: Thank you.

THE COURT: Thank you.

* * * * *

[dated October 6, 1975]

* * * * *

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned parties subject to the approval of the Judge, that the testimony and exhibits introduced at the unfair labor practice hearing before Administrative Law Judge Paul Bisgyer, on September 17 and 18, 1975, in connection with the Order Consolidating Cases, Complaint and Notice of Hearing in the matter of Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, and Bader Brothers Warehouses, Inc. Cases Nos. 29-CC-476 and 29-CE-83, as evidenced by the stenographer's minutes of the C.S.A. Reporting Corporation pages 1 through 299A, shall constitute testimony before the Judge and the United States District Court for the Eastern District of New York in these proceedings, with the same force and effect as if the witnesses personally appeared and gave such testimony herein. All of the testimony and exhibits shall be deemed to be presented herein subject to the same objections as to materiality relevancy and competency, or other grounds as were made at the said unfair labor practice hearing and shall be subject to rulings thereon by the Judge with appropriate exceptions by the party whose objections has been overruled. Furthermore, it is agreed that any party desiring to file briefs with the Court shall do so by October 17, 1975.

IT IS FURTHER STIPULATED AND AGREED that provision may be made for designating the exhibits introduced at the unfair labor practice hearing, by number and letter in this case in such a manner that ready referance and comparison may be made.

This Stipulation shall be part of the record in the hearing in this case and findings may be made on the basis of this Stipulation and the facts herein set forth. However, nothing herein contained shall be deemed to foreclose

any party from the privilege of raising appropriate objections to the receipt in evidence of any testimony contained in the foregoing transcripts including the exhibits, nor from presenting further argument on objections to admissibility, and on motions made before the said Judge, nor from presenting further motions, nor to foreclose any party if such party deems it desireable, from adducing additional testimony or other evidence material to the issues in this case whether or not such issues are dealt with or otherwise affected upon by this Stipulation.

Dated: Brooklyn, New York, October 6, 1975.

DATED: October 6, 1975

/s/ Harold R. Weinrich
Harold R. Weinrich
Counsel for the Regional Office
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York

DATED: October 6, 1975

/s/ Eugene Friedman
Cohen, Weiss and Simon, Esqs.
Counsel for Local 814, I.B.T.
By Eugene Friedman, Esq.

DATED: October 6, 1975.

/s/ Stanley Schair
Aranow, Brodsky, Bohlinger,
Benetar & Einhorn, Esqs.
Counsel for Bader Brothers
Warehouses, Inc.
By Stanley Schair, Esq.

So Ordered: /s/ Mark A. Costantino, USDJ.
Mark A. Constantino

Excerpts from Transcript of Proceedings

* * * * *

16 Court Street
Brooklyn, New York
September 17, 1975

* * * * *

I permitted him to note his appearance because his client is one of the subjects of allegations in the complaint, even though his client is not charged with any violation.

MR. FRIEDMAN: Thank you, his appearance is very limited.

MR. WEINRICH: Your Honor, at this time I ask that General Counsel's Exhibit 1, the formal documents in this proceeding which have been marked for identification as General Counsel's Exhibits 1A through 1J inclusive, Exhibit 1 being an index and description of the formal documents be admitted into evidence.

MR. FRIEDMAN: No objection.

JUDGE BISGYER: documents are received in evidence.

(Whereupon, General Counsel's Exhibits 1A through 1J heretofore marked for identification, received into evidence.)

JUDGE BISGYER: Before proceeding any further are there any stipulations to be noted for the record?

MR. WEINRICH: No, there are not.

I would like to make an amendment to the Complaint however.

JUDGE BISGYER: I will entertain the motion.

MR. WEINRICH: In Paragraph 20 of the Complaint, your Honor, basically a conclusionary allegation concerning the object of Respondent's conduct in
7 the last, in the two last lines of that paragraph it is presently alleged they engaged in said conduct with an object to have Bader to cease doing business with Golden Cycle.

That object is in error and is inconsistent with the nature of the dispute alleged in Paragraph 11 and I would like to amend the Complaint to reflect that the object of said conduct was to force and require Golden Cycle to cease doing business with Bader.

I should note that this amendment in no way changes the proof the General Counsel will seek to introduce in this proceeding.

I have as of last Friday notified counsel for the Respondent, Mr. Friedman, by telephone of my intention to make the amendment and I would further like to point out this amendment brings these papers in line with papers that were previously served upon all the parties to the proceedings in prior NL litigation.

JUDGE BISGYER: That is quite an interesting amendment.

It does not seem to be a pro forma amendment, it looks like the General Counsel is changing whatever its theory of the case may have been to say the conduct allegedly engaged by the Union was to stop party A from doing business with party B.

Now, General Counsel says it was to stop party
8 B from doing business with party A.

I would like to know the purpose of it and what the different theories are on which these various

objectives are based on.

JUDGE BISGYER: I can see the purpose. I will let him tell you himself.

MR. WEINRICH: I was going to give an opening statement. I will tell you the purpose.

We allege with respect to the 8B (4B) violation that the Union dispute was with Bader Brothers and which it alleged in Paragraph 11 of the Complaint which under our theory of the case would make Bader Brothers the primary in this dispute and in this proceeding which would then in turn make Golden Cycle the secondary or neutral.

It is our claim that picketing took place directed at Golden Cycle, the neutral, in order to have Golden Cycle the neutral stop doing business with Bader Brothers the primary with whom the dispute existed.

Now, as I pointed out before the error as can be seen by the fact that Paragraph 11 is inconsistent with Paragraph 20 was in essence a clerical error and as stated before the proof to be offered in no way changes.

JUDGE BISGYER: Essentially the facts are the same in the case?

MR. WEINRICH: They are.

JUDGE BISGYER: The proof you are going to present would not be any different from the proof of the allegations?

MR. WEINRICH: Regardless who is the neutral or the primary I would offer the same proof.

JUDGE BISGYER: It is just a question of who would be the secondary or primary under your theory.

You have any objection --

MR. FRIEDMAN: Yes.

Normally I would, and one thing counsel said may leave me to change my mind.

If counsel is going to represent to us that this was a clerical error that somebody typed this and transposed the words, then I will have no objection.

I don't know if that was the case.

It seems highly unlikely, but again if counsel represents that is what happened, I will certainly take his representation.

MR. WEINRICH: I cannot represent that is what happened. If you want to go --

JUDGE BISGYER: Are you prejudiced in anyway if an amendment is granted?

MR. FRIEDMAN: What it leads to is the nature of the General Counsel's case.

If the General Counsel first alleges the Union did something wrong in one way with a certain objection and then changes it at the hearing, whether or not we are prejudiced in terms of notifying, is not my concern, but simply to know where the General Counsel is going.

If he said he needed one thing for one purpose and changes, why are we here.

If the General Counsel does not know it is on theory.

MR. SCHAIR: It seems to me that the issue here is whether the Union would be prejudiced by this amendment.

The Union does not state any prejudice to the facts alleged in the Complaint which have not been

changed in anyway.

It is merely an amendment to a conclusionary paragraph.

It does not seem that the Union could be prejudiced.

MR. FRIEDMAN: After I was notified by Mr. Weinrich on Friday, this is what General Counsel was going to do. I made a brief comparison between the Complaint and the 10-L Petition that was filed in this case.

There has been no resolution in the 10L.

This brief comparison shows there have been at least two changes that I have come across.

One is that some place in the Petition for the 10L, General Counsel alleges that Bader Brothers sold its entire operations, went completely out of business.

In the Complaint General Counsel changed that substantially.

In the Petition for the 10L there was no allegation whatsoever that an arbitration agreement, that the parties entered into was entered into other than voluntarily, whereas in the Complaint an allegation is made there was compulsion by 814 to have Bader Brothers enter into the arbitration agreement.

I raise this point simply because of the change in Section 20 of the Complaint and also because the Complaint was issued after the initial 10L Court appearance where Local 814 presented its position in a brief.

Now, these changes were made in General Counsel's papers and motions as it appears to me after our position, the Union's position was noted in the brief

before Judge Constantino in Federal District Court.

I am reluctant to say why the General Counsel may have made these changes in its Complaint after seeing the position that the Union was taking on the 10L position.

The mere fact that the change in Section 20, as General Counsel alleges is not something pro forma, it seems to me that there is more than this behind it.

JUDGE BISGYER: As I read the Complaint it alleges a secondary activity on the part of the Respondent.

It is also clear from the Complaint that the General Counsel alleges Bader is the primary employer and whether for some reason the objective has been written the way it has been written prior to the motion I think the intention of the Complaint is to indicate that Golden Cycle is really a secondary employee and that accounts for the inversion of names in the amendment m.de by the amendment which the General Counsel seeks to make in the Complaint.

Under those circumstances I will grant the motion.

MR. FRIEDMAN: I do think that all parties should have been entitled to know General Counsel's original theory where apparently Golden Cycle was the primary.

When I heard about its theory now and I think before a decision is made by Administrative Law Judge and the Board we should be apprised of what the original position of General Counsel was.

MR. WEINRICH: I will apprise you.

If you look at the Petition, the Petition conforms

to the amendment that I have just made, therefore, the original theory of the case as set forth in the Petition is the same that is now reflected in the Complaint after the amendment.

Documents in many offices are drafted by various people which may account for the other language changes that you have come across regarding our theory.

There was to a certain extent an internal dispute concerning who the primary and who the secondary should be.

The Regional Director, of course, makes the final determination in issuing all Complaints.

The party who drafted the Complaint as opposed to the party who drafted the Petition attempted to inference the Regional Director into changing the theory of the case.

The Regional Director refused to do so by striking out Paragraph, in Paragraph 11 that which would have changed the primary to the dispute and Paragraph 11 issued the way it did apparently through inadvertence, in the fact the line was not drawn thick enough, Paragraph 20 was not changed to reflect the original theory of the case as set forth in the Petition.

I being trial counsel through inadvertence in its being a conclusionary paragraph did not read through it fully until I spoke to you on Friday.

JUDGE BISGYER: There is no question that the secondary employer under the General Counsel's theory is Golden Cycle?

MR. WEINRICH: That is correct.

JUDGE BISGYER: You are putting the Respondent on notice, does the Respondent need any additional time to prepare in view of the fact that counsel for the General Counsel has indicated very clearly what his theory is with respect to Section 8B (4B) aspect of the Complaint?

MR. FRIEDMAN: No, sir.

JUDGE BISGYER: I granted the motion and the Complaint is accordingly amended.

19 * * * * *

demanded arbitration of the dispute before the American Arbitration Association, and an Arbitrator was designated and the arbitration hearing was set down for sometime in July of 1975.

That arbitration hearing has not taken place at this point.

By way I can best describe is the agreement of the parties a hearing was held, the charging party in this proceeding Bader Brothers and the Employer in that proceeding requested an adjournment.

That request was opposed by the Union, that took place at the time the 10L papers were being filed and the arbitrator granted a brief adjournment to see if a determination was made.

It was his intention I think the parties will agree with me to go forward absent -- in order not to go forward he would not stop on the basis of the papers filed.

The parties to this proceeding appeared in District Court on July 25th, at that time the parties stated their positions to the District Court Judge.

However, by agreement of the parties the picketing was stopped temporarily and the arbitration hearing was then held in abeyance pending an attempt to resolve the matter between the parties, as has been previously indicated to you those attempts have been unsuccessful and subject to matters which will come out subsequently the picketing after a certain date pursuant to the agreement reached with the District Court Judge can resume and the arbitration can go forward absent attempts to stop it by the General Counsel pursuant to 10L.

Now, that is the factual heading in which the dispute arises.

It is General Counsel's position that the cause in question is violative of Section 80 in that it requires the sensation of business between the Employer seller Bader Brothers and the prospective purchaser of the physical assets and lessee of the warenouse.

In that clause, revise any transactions to those buyers who are willing to accept the terms of the collective bargaining agreement in existence between Local 814 and Bader Brothers.

When General Counsel bases its determination in this respect and basically on the case of Commerce Tankers Corporation and Vantage Steamship Corporation appearing 196 NLRB Page 1100, and also based our position on a case which comes out of the Second Circuit of New York from the Court of Appeals, based on the appeal of a District Court action and granting an injunction, that case would be Danielson versus

Masters Mates & Pilots appearing at 89 LRRN 2564.

* * * * *

37 was any possibility at this time to stipulate to any of the jurisdictional facts alleged in the complaint possibly the conclusion if not just the facts.

MR. FRIEDMAN: No, I am sorry.

MR. WEINRICH: General Counsel calls Mr. William Cross.

Whereupon,

WILLIAM CROSS

called as a witness, having been first duly sworn in by Judge Bisgyer, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Weinrich) What is your name and address? A. William Albert Cross, 236 Bow Drive, Hauppauge, New York.

Q. Mr. Cross, by whom are you employed? A. Golden Cycle Van and Storage of New York Incorporated.

Q. Where in what capacity are you employed by Golden Cycle? A. Manager.

Q. Will you describe for us your duties as manager of Golden Cycle? A. I am responsible for the day-to-day operations of the company.

Q. Where is Golden Cycle Van Lines of New York

38 presently located? Where is their principal place of business? A. 475 Underhill Boulevard in Syosset.

Q. Do they own that location? A. They do not.

Q. Is that a rented facility? A. They lease the facility.

Q. From whom is the facility leased? A. Bader Brothers Warehouses, Inc.

Q. If you know, will you tell us in which state Golden Cycle Van Lines of New York Inc. is incorporated? A. The name is Golden Cycle Van and Storage of New York Inc., it is a New York corporation.

Q. What is the business of Golden Cycle? A. Household goods, moving and storage essentially.

Q. The moving of household goods, does that take place only within the State of New York? A. It does not, it crosses interstate lines.

Q. Is Golden Cycle affiliated or a subsidiary of any other corporation? A. It is a subsidiary, perhaps through intervening companies of Golden Cycle Corporation.

MR. FRIEDMAN: Objection, I think the witness said perhaps through, can't he be more definite.

JUDGE BISGYER: Could you be more definite.

39 What did you mean by perhaps?

THE WITNESS: The ultimate parent is Golden Cycle Corporation with offices in Colorado Springs, Colorado.

I am not personally aware who the direct parent of Golden Cycle Van Storage of New York Inc. is.

It could very well be Greyhound Van Lines, Inc.

It could also be Golden Cycle Transportation Corporation.

JUDGE BISGYER: You do not have that information?

THE WITNESS: I do not have immediate personal knowledge.

Q. When did Golden Cycle begin operations from the facility you have named in Syosset? A. On March 17, 1975.

Q. Since that date, has Golden Cycle continued in operation? A. Yes.

Q. Since March the 17th, 1975, would you tell us what has been the gross revenue from the performance of services received by Golden Cycle? A. Approximately $50,000 a month.

Q. A month? A. Monthly.

Q. Of that $50,000 a month, how much if any of that has been derived from the transportation of household goods and other commodities across State lines
40 and interstate commerce? A. Golden Cycle Van and Storage of New York is an agent of Greyhound Van Lines Inc. an interstate carrier of household goods.

It is an agent of Smyth Worldwide Movers an international forwarder of household goods.

Golden Cycle Van and Storage has booked on the average $50,000 a month in interstate household goods moved.

The number comes from the booking of interstate line haul and does not include so-called accessorial services such as packing of household goods.

Q. Is it correct that Golden Cycle has operated for less than a period of a year? A. Yes.

Q. Now, Mr. Cross, when did you first -- you testified that the Golden Cycle operation began on March the 17th, 1975.

When were you first physically present at the Syosset warehouse? A. March the 10th.

JUDGE BISGYER: 1975?

THE WITNESS: 1975.

Q. Do you recall if in the month of March, 1975 you had occasion to speak with or meet with any representative of Local 814? A. Yes.

41 Q. Do you recall when that took place the first time, if there was more than one? A. During the week of March of the 17th, I think it was on the 19th.

Q. Who if anyone did you meet with at that time? A. Philip Duran.

Q. Where did your meeting with Mr. Duran take place? A. In my office.

Q. Was anyone else present? A. Mr. James Deuel.

Q. Who is Mr. James Deuel? A. He was at that time a Division Manager, Van and Storage for Smyth Greyhound, the trade name given to the transportation group of Golden Cycle.

Q. Did you have a conversation with Mr. Duran at that time? A. Yes.

Q. If you recall, will you tell us what was said by Mr. Duran to you and what you said, if anything, to him? A. I think Mr. Duran was introduced to us by Mr. Fred Bauer.

He was and is a, an executive of the Bader Brothers organization, I don't know his principal title.

Bauer introduced Duran to us and Duran said he was directed to talk with Bader.

42 He did not say which Bader while he was here if you will.

He wanted to meet us and asked what we were doing.

We told him that we had purchased some of the assets of Bader, had rented the facility and we were going into the moving and storage business.

Q. Did any further conversation take place? A. He said that he was a bit out of sorts that morning and would like to make some arrangement to talk with us

in the future.

We told him to contact us in the meantime.

Q. Do you recall if he gave you anything at that time? A. He left his business card.

Q. Do you recall if he gave you anything else at that time? A. He left the copy of the standard, or he said it was the standard union contract, a blue book that he said was the contract that existed between him or the Union and Bader Brothers and suggested perhaps maybe would I want to read it.

Q. Was anything else said during that conversation that you can presently recall? A. Nothing other than pleasantries.

Q. Did there come a time when you met with a, with the same or with another representative of Local 814? A. Yes.

43 Q. When did that conversation take place? A. The next day.

Q. Do you recall what date that was? A. I think it would be the 20th.

JUDGE BISGYER: March 20th?

THE WITNESS: Yes.

Q. Of 1975? A. 1975.

Q. Who did you meet with at that time? A. Mr. Duran and Joseph Denetra.

Q. Did Mr. Denetra identify himself? A. Yes, he also left a card, I think the card said business representative.

Q. Did a conversation take place at that time? A. Yes.

Q. Would you tell us what was said to you by the representative of the Union and who said it and what

you said to them, if anything? A. It would be difficult to separate what each man said because they were comfortable in each others presence and spoke, you know, sometimes to complete each other sentences.

They in essence asked if we would accept the contract that existed between Bader Brothers that had existed or existed between Bader Brothers and the Union.

We did not respond directly to the question but
44 instead entered into a discussion of the type of work that we intended to do, indicating that perhaps the type of work we intended to do was not the type of work that had formerly been performed by Bader Brothers.

We discussed such things as our interest in the booking and the servicing of international shipments including the use of containers, large wooden boxes specifically designed for overseas shipments of household goods and our intention to use that mode of transportation for the shipment of domestic household goods.

We indicated that this would be our intention in order to improve service to customers because the use of this technique will allow for more ready transportation of the goods during the peak summertime period.

They asked if we would sign the contract, both Deuel and I told him of course we were not in power to enter into any contract on our own without corporate approvals, but that from the rather cursory investigation of the contract that we had made since it had been left with us, it seemed as if it were not specifically designed for the kind of business we

were contemplating and asked if it would be possible to work out some sort of compromise better fitted to our requirements.

I think it was Duran that said no, that is the way it is, if you did not the words, take it or leave it,
45 that was the impression.

Q. Was anything else said during the conversation? A. Pretty much again pleasantries there was not any prolonged discussion and to the best of my knowledge no specific discussion of individual positions of the contract except I do recall someone, I think it was Jim Deuel saying bringing up a kind of objection to some of the work rules or regarding the number of pounds that a work team, pounds of household goods that a work team could handle in a period.

The second gentleman indicated that we would hear from them again.

The impression I received is that it would be another meeting such as we had had.

We told him that we were available at anytime.

Q. Was any mention made during that conversation of or any questions asked you concerning the employment of any employees? A. They asked if we would employ the Bader employees and I answered that we would, we would accept employment applications from them and from others and that I would select from those applications those whose abilities best fitted our requirements and we would be making some hirings.

Q. Following your conversation, on what you testified to as March the 20th, did you receive any sub-
46 sequent communication from any representative of Local 814? A. Yes, we first received telephone advise,

then written advise from an attorney and then Western Union confirmation of the Union's -- it was in the form of a telegram where they asked us to accept the contract or demanded we accept the contract that had existed with Bader.

MR. WEINRICH: May I have this marked as General Counsel's 2 for identification and this is General Counsel's Exhibit 3 for identification.

(Whereupon, documents referred to were marked General Counsel's Exhibit 2 and 3 respectively, for identification.)

Q. Mr. Cross, I show you General Counsel's Exhibits 2 marked for identification and ask you if you can identify that document?

(Handing to the witness). A. Yes, it is a piece of paper which I received in the mail.

Q. Is this the telegram which relates to your testimony? A. This is a typewritten copy of a Western Union form, it would appear now that the wording is exactly the same of that that was in the telegram.

Q. From whom did you receive this? A. From the law office of Cohn, Weiss and Simon.

Q. I show you, do you know when that was received? A. I think it was received on the morning of March
47 the 21st.

Q. I show you General Counsel's Exhibit 3 marked for identification and ask you if you can identify that copy? (Handing to the witness.) A. It is a telegram.

Q. Was that received by Golden Cycle? A. It was and it was received in the mail on Monday or Tuesday of the following week.

It had previously been read to me over the telephone.

Q. That would be the week of March 24, 1975? A. It was received in the mail on the week of March 24th.

MR. WEINRICH: Your Honor, I ask that General Counsel' Exhibits 2 and 3 marked for identification be received in evidence.

JUDGE BISGYER: Any objection?

MR. FRIEDMAN: No objection.

JUDGE BISGYER: The documents are received.

(Whereupon, General Counsel's Exhibits 2 and 3 heretofore marked for identification, received into evidence.)

Q. Following the receipt of the -- between the time that you last met with Mr. Denetra and Mr. Duran as you testified to and the time of your receipt of General Counsel's Exhibit 2 and 3 in evidence, did you have any further communication with Local 814? A. No.

48 Q. Following your receipt of General Counsel's 2 and 3 in evidence, did you have any further communication with representatives of Local 814? A. I don't know if it, if the man can be considered a representative of 814.

There was a conversation with a Mr. Thomas Coppinger.

Q. Do you know who Mr. Coppinger is? A. He said he had been or was the steward of the group who were former employees or employees of Bader Brothers.

Q. When was, when did that conversation take place? A. On the 26th of March.

Q. Where did that conversation take place? A. In my office.

Q. Was anyone else present? A. I think that James Deuel was present.

Q. What did Mr. Coppinger say to you in that conversation?

MR. FRIEDMAN: Objection.

MR. WEINRICH: I will withdraw the question, your Honor.

Q. Did anything else take place on March the 26, 1975? A. Yes.

Q. What would that be? A. I assume you mean pertinent to this?

49 Q. Pertinent to this situation, yes. A. Picketing began.

Q. Where did the picketing take place? A. On the sidewalk in front of the building, the building we were occupying on Underhill Boulevard.

Q. Did the pickets carry signs? A. Yes.

Q. If you recall, would you tell us what the sign stated? A. They were cardboard. On the top of the sign printed were the words on strike.

On the bottom were the printed words Teamsters, between the two written in what appeared to be felt pen were the words on strike Local 814 IBT against Golden Cycle Van of New York and Bader Brothers.

No dispute with any other employer.

Q. Did the picketing continue after March the 26th, 1975? A. Yes.

Q. Until when did it continue? A. On a more of less consistent basis through July.

Q. Do you recall the last date that you observed the picketing? A. I think it was July, 24th.

Q. Now you testified that the picketing continued on a more or less consistent basis.

Could you tell us what you mean by that?

54 * * * * *

Q. You assumed that when you were answering Mr. Weinrich's questions unless he asked you otherwise? A. That is correct.

Q. You began doing business out of Syosset on what date? A. March 17, 1975.

Q. When did you first hire employees to be employed at Syosset? A. I don't remember the very first day.

I don't remember that, but I think that it was beginning on or about that time.

Q. Sometime in the middle of March? A. Yes.

Q. Does Golden Cycle book work for its own name? A. Yes.

Q. How does Golden Cycle get business? A. Could you be more specific or what do you want?

Q. Can I call you up and ask you to move my household? A. Yes.

Q. Do you get any business through referral, from van lines? A. Through referral from --

Q. Van Line? A. Yes, excuse me, through referral from a van line.

Q. Which van line is that? A. Greyhound Van Line, the word is plural, but the company

* * * * *

Q. Your only carrier is Smyth Greyhound?
A. Our only carrier of domestic household goods is Smyth Greyhound at present.

Q. The moves for the military that you refer to, were these, they -- the moves of military, it belonged, the personals belonged to the military personnel?
A. Used household effects.

Q. What is that word used? A. U-s-e-d.

Q. I believe your testimony had been that you had been booking approximately $50,000 per month since you went into business? A. Yes.

Q. What do you mean by booking $50,000 per month?
A. What that means is that we were the agency which registered interstate moves with the carrier.

Q. That does not -- A. And that dollar was an estimate of the line haul portion of the total contract which is the portion which under ICC regulations has historically been the key revenue number and its line haul.

Q. That -- A. (Continuing) Which is compensation for the hauling of furniture.

Q. That $50,000 per month, was that your fee from the

* * * * *

65 authority it is to accomplish the move.

Q. What you mean that someone will call you and say I am moving to England will you move me, is that what you mean by booking an international move? A. There is more to it than that, that is the first step.

Q. Does Golden Cycle do that move? A. They prepare the furniture for the move, Golden Cycle does not - we don't run steamships.

Q. When you say that you received, Golden Cycle has received in commission revenue about $40,000 since March for that type of move? A. International move, yes.

Q. On what have you been basing or your estimates? A. My memory of the bookings and records.

Q. Have you reviewed the books and records recently concerning these matters? A. Yes, but not in preparation for this hearing.

Q. Are these books and records present in the hearing room? A. No.

Q. How many employees does Golden Cycle have now performing driving, helping, housewaring and packing work? A. Driving, helping, packing, warehouse work?

66 Q. Yes. A. Direct employees?

Q. Yes. A. I would say about 15.

Q. All these employees are employed at Syosset? A. Yes.

Q. Would you describe the nature of the work that these employees do? A. Which employees?

Q. The driver helpers?

JUDGE BISGYER: The 15?

A. They prepare furniture for moving from residents to resident.

They pack household effects.

They wrap the furniture in protective pads, place it in trucks, drive the trucks.

They take the furniture from the truck.

If the situation calls for it, remove the pads and place it within the resident.

Q. Do they do any similar work with respect to commercials? A. Yes, except that the furniture is

76 AFTERNOON SESSION

JUDGE BISGYER: The hearing will resume.

Will you call your next witness?

MR. WEINRICH: General Counsel calls Mr. Herman Bader.

JUDGE BISGYER: State your full name and address.

THE WITNESS: Herman Bader, I reside at 22 Reed Drive, Roslyn, New York 11576.

Whereupon,

HERMAN BADER,

called as a witness, having been first duly sworn in by Judge Bisgyer, was examined a: testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Weinrich) Mr. Bader, how do you earn a living? A. Before or after, I was president of Bader Brothers Warehouses, Incorporated.

Q. Do you still hold that position? A. Yes.

Q. Is that corporation presently in existence? A. Yes, it is.

Q. In which state is Bader Brothers Warehouses Inc. incorporated? A. The State of New York.

Q. Prior to March 26th of 1975 would you tell us what the business of Bader Brothers Warehouses Inc. was? A. Bader Brothers Warehouses, Inc. was engaged in the

different.

Q. They would do the normal work that is associated with these type of employees in the moving and storage industry, is that accurate? A. I think so.

Q. You had begun to testify earlier about a conversation you had with Mr. Coppinger at which time I had objected

* * * * *

77 moving of household goods and also in the storage of household good splus other merchandise.

Q. Prior to March 26th, 1975 where was the principal place of business? A. 475 Underhill Boulevard, Syosset, New York 11791.

Q. Do you hold any office in any other corporation? A. Yes, I was president of Bushwick Trailors, Inc. and also secretary-treasurer of Bader Brothers and Storage Corporation in Florida, a Florida corporation.

Q. In your capacity as president of Bader Brothers Warehouses, Inc., did you have occasion on behalf of that corporation to enter into any collective bargaining agreement with any labor organization? A. Yes, I did.

Q. With which labor organization? A. AFL, IBT 814.

MR. FRIEDMAN: There is no AFL association? A. IBT.

Q. When did you enter the most recent collective bargaining agreement with Local 814? A. The contract was ratified industry on March 31st of 1974.

I was a signatory for my company to that contract, I believe sometime at the end of April or early May, 1974.

68 he said.

Q. Did you say anything? A. No.

JUDGE BISGYER: Would you identify Mr. Coppinger.

In your testimony previously if you have not identified him, did he indicate who he was?

THE WITNESS: I am sorry, yes.

Q. He said that he was the steward, he was the shop steward for the group that was employed by Bader and that he was there as a courtesy and he was sorry that he was going to have to strike.

You made no response?

A. Not to my recollection.

MR. FRIEDMAN: Thank you, that is all.

JUDGE BISGYER: I will permit you to cross examine with respect to the Coppinger conversation.

REDIRECT EXAMINATION

Q. (By Mr. Weinrich) There are a few things I would like to straighten out Mr. Cross, you testified to on –

MR. FRIEDMAN: I object to that.

MR. WEINRICH: I withdraw my introduction.

Q. You testified concerning the commission fee for bookings, is the term bookings or the commission received from bookings distinctive from the commission that would be received if the goods were actually carried by Golden Cycle?

Q. Were you a signatory to that contract as part of
78 an association or as an individual? A. As an individual.

MR. WEINRICH: Mark this General Counsel's Exhibit 4 for the purposes of identification.

(Whereupon, document referred to was marked General Counsel's Exhibit 4 for identification.)

Q. Mr. Bader, I show you General Counsel's Exhibit 4 marked for the purposes of identification and ask you if you can identify that document? (Handing to the witness.) A. I can.

Q. What is it? A. It is a collective labor agreement between Local 814 and various associations known as the moving industry of New York.

Q. Is this the contract that you signed independently of the association? A. Yes, it is.

MR. WEINRICH: I ask General Counsel's 4 for identification be admitted into evidence.

JUDGE BISGYER: Any objection?

MR. FRIEDMAN: No objection.

JUDGE BISGYER: General Counsel's 4 is received.

(Whereupon, General Counsel's Exhibit 4 heretofore marked for identification, received into evidence.)

79 Q. Did there come a time Mr. Bader when you entered into negotiations for the sale of certain physical assets of your business?

MR. FRIEDMAN: May I have that read back again.

(Whereupon, the pending question was read by the

Reporter.) A. Yes.

Q. When did you enter into such negotiations? A. The summer of 1974.

Q. With whom did you enter into such negotiations? A. With Greyhound Van Lines, Inc. from Belview, Washington.

Q. Did there come a time when you concluded an agreement with that company? A. Yes.

Q. When would that have been? A. The agreement was signed on September 4th or 5th, 1974.

Q. Did you also enter into any type of agreement dealing with real property? A. Yes.

Q. What type of agreement was that? A. A ten year lease.

Q. Of what? A. On the premises, the terminal property, the warehousing property in Syosset, New York.

* * * * *

85 in evidence, do those agreements set a date for the transfer of the assets involved? A. That don't specifically set a date inasmuch as they don't specifically set a date.

Q. When were those physical assets transferred? A. The physical assets were transferred on a gradual basis during the next six months.

Q. As to the real property, when was that transferred pursuant to the lease? A. The lease started September 1st.

Q. Was the rent paid from that time forward? A. Yes.

Q. Now, concerning the physical assets which were sold pursuant to the agreement in evidence, were all

of the physical assets of Bader Brothers, Inc. sold in that agreement? A. No.

Q. What was retained? A. We retained five tractors and trailors, some cars, some used household goods, lots that were in the warehouse, the warehouse itself of course is retained, those are all tangible.

Q. Have any of those tangible assets you named been disposed of? A. One of the tractors and trailors were sold.

86 Q. What happened to the rest?

JUDGE BISGYER: To a third party?

THE WITNESS: To a third party.

Some of them are under rental.

Q. To whom? A. The equipment is under rental to American Security Van and Storage at Atlanta, Georgia.

Q. Do those agreements in evidence dispose of any of the Bader Brothers tangible assets? A. No.

Q. Were any of the intangible assets disposed of?

MR. FRIEDMAN: Objection as to whether there are any intangible assets, assuming facts not in evidence.

JUDGE BISGYER: The answer, they were disposed of.

I will overrule your objection, there clearly indidates they were.

Q. What intangible assets were there after the trans action concerning the physical assets? A. The name, good will, the corporation, the certain accounts receivables.

Q. Has the name been sold? A. No.

Q. What certificates are you referring to?

A. We had certificates under the Public Service Commission now called the Department of Transportation

for the local New York Metropolitan area and the
87 intrastate, for the entire state of New York.

Also we have an ICC certificate which is in the process of being sold at the present time.

Q. The local certificates were they sold? A. They were sold.

Q. Were any of the certificates sold to Golden Cycle? A. None.

Q. Concerning your accounts receivable, does Bader still retain those? A. Yes.

Q. At the time that you entered into the agreement, did you have any contract for future moving services or storage contracts? A. Yes.

Q. At what point in time were the transactions set forth in General Counsel's 5 and 6 consummated in their finality? A. Would you repeat that question.

MR. WEINKICH: I will rephrase the question.

Q. You testified the agreement was a gradual transfer of the physical assets of Bader Brothers.

When was the transfer pursuant to those agreements completed? A. It was completed in March.

JUDGE BISGYER: What year?

88 THE WITNESS: Of 1975.

Q. At that time did Bader retain any contract for any future moving or storage service? A. No, we ceased doing any moving and storage business as of March 25, 1975.

Q. Since March 25, 1975, what type of business, if any, had Bader conducted? A. The wind down of the accounts receivable and the business matters pertaining to the business.

The sale of the ICC certificate, we are landlords of tenants of the facility.

We also have renting vehicles, we are still a corporation doing business with the exception of moving and storage business.

Q. Where is the principal office of Bader Brothers located? A. The principal office is located at 22 Reed Drive, Roslyn, New York 11576.

Q. Does Bader since March, has Bader since March 25, 1975 retain any personnel in its Syosset warehouse in the Syosset facility? A. We retained two people.

Q. Who would they be? A. Fred Bauer and Elaine Decker.

Q. For what purposes or purpose have those people been

* * * * *

91 It was -- it also, I was present at the New York State Warehouseman's meeting in September of 1974 last year in which being an industry leader over these many years, questions were addressed to the fact that it was common knowledge that we had engaged in a transactions with Greyhound Van Lines.

MR. FRIEDMAN: Objection.

JUDGE BISGYER: I will sustain the objection, that it was common knowledge.

Q. Did you make any announcement concerning the transaction at the meeting you described? A. I talked to several of the leaders in the industry.

Q. These would be employer leaders? A. Employers.

Q. Did there come a time when Bader Brothers received any communication other than the one you have already described from Local 814 concerning the transaction set forth in General Counsel's 5 and 6 in evidence?

A. The company received a telegram on March 21st from --

JUDGE BISGYER: Of what year?

THE WITNESS: 1975.

MR. WEINRICH: Mark these General Counsel's 7 and 8.

(Whereupon, documents referred to were marked General Counsel's Exhibits 7 and 8 respectively, for identification.)

92 Q. Mr. Bader, I show you General Counsel's Exhibits 7 and 8 marked for identification and ask you if you can identify those documents? (Handing to the witness.) A. Yes.

Q. What is General Counsel's 7? A. The Exhibit 7 is a telegram that was sent to Bader Brothers received on March 21st signed by Vincent Bracco (phonetic) president, to the effect requriing that we ask Golden Cycle to become the signature ot the contract.

Q. What is General Counsel's Exhibit 8 marked for identification? A. A copy of that telegram.

Q. Were both received by Bader Brothers? A. Yes.

MR. WEINRICH: I ask General Counsel's Exhibits 7 and 8 be admitted into evidence.

I have show copies to Mr. Friedman.

JUDGE BISGYER: Any objection?

MR. FRIEDMAN: No objection?

JUDGE BISGYER: The documents are received.

(Whereupon, General Counsel's Exhibits 7 and 8 heretofore marked for identification, received into evidence.)

MR. FRIEDMAN: May I ask if I can receive copies of General Counsel's 5 and 6?

93 MR. WEINRICH: Yes.

Q. Following your receipt of General Counsel's Exhibits 7 and 8 now in evidence, Mr. Bader, did you receive any further communication from Local 814?
A. Yes, I received a copy of a letter that was sent to the office of Brodsky, Altman, attorneys for the industry asking that a meeting of the Joint Management and Labor be set up for a dispute in grievance against Bader Brothers.

MR. WEINRICH: Mark this General Counsel's Exhibit 9.

(Whereupon, document referred to marked General Counsel's Exhibit 9 for identification.)

Q. Mr. Bader, I show you General Counsel's 9 and ask you if this is the document you just testified about? (Handing to the witness.) A. Yes.

MR. WEINRICH: I ask General Counsel's Exhibit 9 marked for identification be accepted into evidence.

JUDGE BISGYER: Any objection?

MR. FRIEDMAN: No objection.

JUDGE BISGYER: Received.

(Whereupon, General Counsel's Exhibit 9 heretofore marked for identification, received evidence.)

MR. WEINRICH: Can we go off the record?

JUDGE BISGYER: Off the record.

(Discussion off the record.)

94 JUDGE BISGYER: On the record.

MR. WEINRICH: Your Honor, during an off the record discussion counsel for the Respondent, counsel for the Charging Party and counsel for the General Counsel agree to stipulate that pursuant to the demand made in General Counsel's Exhibit 9 a meeting was held before the Joint Labor Management in the moving and storage industry at which time it was agreed that the contract drove grievances at the suggestion of the Union it was agreed that the contract grievance procedures be by-passed and a stipulation be entered into submitting the dispute to arbitration under the auspicious of the American Arbitration Association.

In connection with that stipulation I offer a stipulation as General Counsel's Exhibit 10.

MR. FRIEDMAN: I make one correction in that at the beginning of the proposed stipulation the language refers to pursuant to a demand by the Union, I would change that to say that pursuant to the Union's request for arbitration a meeting was held at the Joint Management Labor Board at that time the Union and the Employer entered into an agreement that was referred to and the rest of the stipulation is fine.

MR. WEINRICH: I thought any kind of arbitration is requested, the terminology used is a demand for

95. arbitration is final.

MR. FRIEDMAN: Not so.

MR. SCHAIR: Is it the Union's position that Mr. Bader appearance before the Joint Labor Management Board was completely voluntary and not a matter of a demand

made under the contract that he appear?

MR. FRIEDMAN: It is the Union's position that the Union made a request for arbitration at which Mr. Bader and counsel appeared and Bader Brothers never moved in Court to stay.

MR. SCHAIR: Was the request made pursuant to the collective bargaining agreement which was placed into evidence in this hearing?

MR. FRIEDMAN: Of course.

JUDGE BISGYER: Is the stipulation agreeable?

MR. WEINRICH: I have no objection to Mr. Friedman's comments.

JUDGE BISGYER: Besides the terminology of demand or request, I think is semantic demand become something else.

If attached to the demand is a threat of strike or something like that --

The stipulation will be noted in the record with the corrections made by the respective parties.

MR. FRIEDMAN: Did that stipulation contain the
96 additional prior stipulation?

JUDGE BISGYER: Off the record.

(Discussion off the record.)

JUDGE BISGYER: On the record.

MR. WEINRICH: I have meant to introduce the written stipulation.

JUDGE BISGYER: That is General Counsel's Exhibit 10.

Any objection to the receipt of the document in evidence?

MR. FRIEDMAN: No.

JUDGE BISGYER: General Counsel's 10 is received.

(Whereupon, document referred to was received and marked General Counsel's Exhibit 10 into evidence.)

JUDGE BISGYER: Off the record.

(Discussion off the record.)

JUDGE BISGYER: On the record.

Q. Mr. Bader, to your knowledge was the request for arbitration subsequently made by the Union to the American Arbitration Association? A. Yes.

MR. WEINRICH: Can you, by stipulation in your May 9th letter and the Association's notice of hearing setting down a date of July 31st --

JUDGE BISGYER: Give them numbers now.

MR. FRIEDMAN: Yes.

MR. WEINRICH: By stipulation I would like to offer the May 9th letter of Mr. Friedman into evidence as
97 General Counsel's Exhibit 11 and the Notice of Hearing by the American ARbitration Association as General Counsel's Exhibit 12.

Q. Now, Mr. Bader, besides from --

JUDGE BISGYER: Any objection to the receipt of the documents in evidence?

MR. FRIEDMAN: No, sir, but to make the record complete there was an earlier Notice of Hearing from the American Arbitration Association which General Counsel has not offered.

JUDGE BISGYER: Do you want to put that in as part of your Exhibit?

MR. WEINRICH: I would except I don't have it.

MR. FRIEDMAN: Do you have a copy of it?

MR. WEINRICH: Maybe we can get that.

JUDGE BISGYER: Off the record.

(Discussion off the record.)

JUDGE BISGYER: On the record.

MR. WIENRICH: Your Honor, also by agreement of the parties which I now offer as General Counsel's 13 a letter from the American Arbitration Association dated May 21, 1975 and as General Counsel's 14 a first Notice of Xearing dated June 17, 1975.

JUDGE BISGYER: Let's see, you have General Counsel's numbers -- I have not ruled on these.

98 MR. WEINRICH: 11, 12, 13 and 14.

JUDGE BISGYER: No objection?

MR. FRIEDMAN: No objection.

JUDGE BISGYER: The documents are received.

(Whereupon, the aforementioned documents were received and duly marked in evidence as General Counsel's Exhibits 11, 12, 13 and 14.)

Q. Mr. Bader, besides the documents which have been offered into evidence concerning the arbitration and the two telegrams that you have identified, did you receive any further written or oral communication from Local 814 concerning your transaction with Golden Cycle in the period of March 1975? A. You got the telegram of the 21st, copy of a letter of the 26th, Notice of the Hearing before the Joint Management Labor Board, the stipulation, copies of the Notice of the meeting of the arbitration of July 14th.

There were no other notices that I know of at this time.

Q. At which point did Bader stop its moving and storage operations? What was the last date? A. The last day was March 25, 1975.

Q. As of that time how many bargaining unit employees were employed by Bader Brothers? A. Approximately nine.

* * * * *

102 A. It was during negotiations and that I had, we made phone calls to the Union and at that meeting the Union wanted Pan American to agree to the contract and to Article 50-B of the contract.

Q. Those negotiations did not consummate in an agreement, did they? A. The agreement was signed by all parties and there was a default on the part of Pan American Van Lines, that is the agreement of the lease and the business arrangement between the two companies.

Q. Have you had occasion to sell any other of your property? A. Yes, I sold our warehouse on Atlantic Avenue, 900 Atlantic Avenue in Brooklyn in May of 1974.

Q. To your knowledge, at that time, did you comply with Article 50-B of the contract? A. No.

Q. Were you requested to do so? A. No.

Q. For how long has Bader Brothers Moving and Storage been in business, Mr. Bader? A. Originally started in 1905.

Q. How long have you been connected with the operations of the business? A. I have been actively
103 engaged in the operations of the for 38 years.

Q. During that period of time had Bader Brothers had occasion to sell or lease any of its vehicles. A. It was common practice --

MR. FRIEDMAN: Objection. A. Yes.

MR. SCHAIR: He can testify as to common practice in his own organization.

MR. FRIEDMAN: There is no question pending, relax you will get your chance later.

MR. SCHAIR: You made an objection.

JUDGE BISGYER: I will sustain the objection, rephrase the question.

Q. Was it common practice of Bader Brothers to sell vehicles? A. Yes.

MR. FRIEDMAN: Objection.

JUDGE BISGYER: Overruled, I know it is leading, I have no intention of having him rephrase the question.

Q. To whom would such vehicles be sold?

MR. FRIEDMAN: Objection, the foundation please?

MR. WEINRICH: If to anyone.

MR. FRIEDMAN: Same objection.

JUDGE BISGYER: Well --

MR. FRIEDMAN: What is the purpose of this line of
104 questioning?

JUDGE BISGYER: What are you going into now?

MR. WEINRICH: There is a potential issue as to whether the type of transactions entered into between Bader Brothers and Golden Cycle would fit within the definition of doing business within the meaning of either Section 8B4 or Section 8E of the Act.

I believe in the Commerce Tankers case where the Board did not resolve that issue concerning the issue of capital assets, the Board did find that in the shipping industry it was common practice for shipping companies to sell ships, therefore the sale of ships and the sale of a last ship was considered to be doing

business within the meaning of the Section.

I am attempting to show that it was common practice with Bader and in fact, common practice between the industry to sell vehicles between companies as well as to other operators thereby hoping to establish that the sale of the vehicle was done in the normal course of business and is within the definition of the term doing business.

MR. FRIEDMAN: I don't believe General Counsel is serious, if you forgive me.

MR. WEINRICH: That is what I intend to go into your Honor if permitted to do so.

JUDGE BISGYER: I will sustain the objection, but
105 permit you to make your offer of proof and let the Board determine that.

I will be very frank, I find a little difficulty where a company is in business of selling, let's say, certain items and then all of a sudden it goes out of business and the violation is because it went out of business without giving notice, that that becomes the regular type of business of the particular company.

Assuming that the argument is made that the Act only covers the business of the company which has been regularly done all along, I can see right off a little distinction between selling certain things while it is in business and selling the registration of its entire business and gone out of business.

I can see the difference between that.

Now, whether the Act applies to the situation that is presented here is something that will have to be decided.

If the Board has so spoken, then the Board is Law

as far as I am concerned in this particular case.

MR. SCHAIR: May I ask one thing?

JUDGE BISGYER: Yes.

MR. SCHAIR: In the opening statement of the representative of the Union here it was claimed that this transaction was a one shot deal and therefore the company could not be considered doing business.

106 I think Mr. Bader has testified that far from being a one shot deal the corporation is still in business, still has assets to be sold and is leasing trucks and is leasing a warehouse so that it is continuing its business although not a certain aspect which is the moving and storage business.

I think that this is a situation where that same clause could come back and haunt the same employer because he has other transactions or be it they were not the type of transaction he would have entered into in the moving and storage business.

He ahs other transactions he has to make with respect to this business and in fact the leasing and selling of trucks was part of his regular business even during the time when he owned the warehouse or operated the warehouse and the mvoing and storage business and he continues to do same.

JUDGE BISGYER: The old practice of selling an item did not involve the discontinuing of the business did it?

MR. SCHAIR: In one case --

JUDGE BISGYER: What happened here, the employer sold items to discontinue business.

MR. SCHAIR: To discontinue one aspect of his business.

It was always a part of his business to rent and sell and he also sold trailors and trucks and he continues
107 to do that.

He has not terminated all aspects of his business, in one of the cases cited here, or Danielson case it was last ship this employer sold.

There were no more ships to be sold, yet it was deemed to be doing business.

JUDGE BISGYER: You notice the Court as I recall had a little doubt as to whether the Board was correct there in considering that the mere fact they sold some ships before, even there I can see a little difference in the situation that is presented.

MR. SCHAIR: The argument I am making, the transactions which are left to be made and which are, which still ought to come on similar to those which have occurred in the past in the regular course of this employer's business, just as in selling the ships was always a part of the business of that particular company.

JUDGE BISGYER: On the record.

I will, instead of taking an offer an offer of proof I will take some evidence along the lines that counsel indicated in his prior questions to the witness and I will give the Respondent a continuing objection to that line of questioning.

MR. FRIEDMAN: Thank you.

108 Q. (By Mr. Weinrich) Mr. Bader, in the operation of Bader Brothers, do you from time to time have occasion to sell trucks? A. Yes.

Q. Under what circumstances would you sell these trucks?

MR. FRIEDMAN: Objection, I would like a foundation laid, you're asking a broad question.

I think we should have a foundation.

JUDGE BISGYER: He is talking about policy, then he will go into whatever details are necessary if he feels to do so, you are privileged on cross examination to have his, have him define a particular transaction.

Q. Under what --

JUDGE BISGYER: I will overrule the objection with the understanding I just indicated.

Q. Under what circumstances would Bader Brothers divest itself of trucks or tractors or trailors?
A. Under the occasion of the decrease of business for example following the contract of 1971 we found that our local business was getting less and we sold our local equipment because we could not use it any more.

We also were selling equipment as a normal course of making a deal that somebody wanted a trailor and the financial renumeration was acceptable for us to
109 sell the equipment.

Q. You mentioned you sold off local trucks? A. Yes.

Q. When were these trucks sold off? A. From the period of 1971 until this deal was consummated, we probably sold approximately 15 units.

Q. Who were these 15 units sold to? A. Generally to other movers.

Q. Do you know the name of any of these other movers to whom these vehicles were sold? A. Sakeo (phonetic) Moving and Storage in Brunswick, New Jersey, Statute of Liberty Moving and Storage, Jamaica, Long Island, Red Ball Van Lines, Jamaica, Long Island, just to mention

some.

Q. You mentioned tractors and trailors being sold, who were, when was the last time prior to March 25th that you had sold tractors and trailors or a tractor and trailor, if you know? A. I know we sold a tractor and trailor to Red Ball Van Lines prior to March.

Q. Prior to March? A. Yes.

Q. Do you know when? A. I don't know exactly.

JUDGE BISGYER: March of what year?

THE WITNESS: '75.

JUDGE BISGYER: A year before or two years
110 before?

THE WITNESS: About a year before in 1974.

Q. Had you sold other trailors prior to that? A. Yes.

Q. To whom were those trailors sold and when, if you remember? A. I would not know offhand.

Q. Did the company Bader Brothers at anytime operate an interstate commerce through the use of owner-operators? A. Yes.

Q. Was that ever an occasion when tractors and trailors were sold to owner-operators? A. Yes.

Q. Do you recall when the last such transaction was made? A. I don't recall the exact transaction, but certainly it was within the last several years.

Q. During the last five years period, would you tell us how many tractors and trailors were sold, if any?

MR. FRIEDMAN: As to owner-operators? A. To owner-operators?

Q. Yes. A. I would say at least three tractors, three tractors, no trailors to owner-operators.

Q. During the same five year period of time, could you tell us how many tractors or trailors were sold to other moving companies?

111 A. I don't know the exact figure.

I would say that probably we sold off somewhere in the vicinity of a half dozen tractors and trailors.

Q. The local vehicles that you spoke of, were those tractors or trailors, were those, what is commonly known as straight jobs? A. Straight jobs.

Q. Have you ever held any office or position in any industrywide association? A. Yes.

Q. What position would that be? A. I was president of affiliated van owners association which dates back to about 15, 15, 18 years ago.

I also was secretary and treasurer of New York Furniture Warehousemen Association.

Also I was treasurer of Stablization which is what was the previous name for the Joint Management and Labor Board.

I was a Trustee on the Pension and Welfare Fund.

I was Board of Directors of New York State Warehousemen's Association.

I was Board of Directors of the Movers and Warehousemen's Association Incorporated Washington, D.C.

Q. Do any or all of those positions that you have held in the past, are you familiar generally

112 with the practices in the moving and storage industry in this area? A. I think I can qualify for that.

Q. To your knowledge, based upon the positions you held in the industry, do you know if it was a practice in the industry that vehicles be sold from one moving and storage company to another moving and storage company?

MR. FRIEDMAN: Objection.

JUDGE BISGYER: I will overrule the objection.

MR. FRIEDMAN: He has not been qualified because you hold some kind of position does not mean you know what all the people in the industry are doing.

JUDGE BISGYER: I overrule your objection, you may answer the question.

A. Yes.

Q. Was that your answer to the question? A. Yes.

MR. WEINRICH: Your Honor, at this time concerning Mr. Friedman's objection to the qualification of Mr. Bader to testify concerning industrywide practice, I ask that administrative notice be taken of the decision of the Board and of Administrative Law Judge Hershal Plin in Local 814 IBT and Carl Lieb, Jr. and Santini Brothers at 208 NLRB number 22 in which Mr. Bader is quoted at length concerning his knowledge of the moving and storage industry in the metropolitan area.

113 JUDGE BISGYER: Off the record.

(Discussion off the record.)

JUDGE BISGYER: On the record.

Q. Mr. Bader, during the year prior to the issuance of this Complaint, August the 6th, 1975, could you tell us the amount of gross revenues that Bader Brothers derived from its operations?

MR. FRIEDMAN: Objection, any retroactive figures -

JUDGE BISGYER: What period are you covering?

MR. WEINRICH: For the year prior to the issuance of this Complaint.

JUDGE BISGYER: Does he know what year this Complaint was issued?

MR. WEINRICH: I gave the date August 6, 1975.

JUDGE BISGYER: I will overrule the objection.

A. In excess of $500,000.

Q. Of that figure, do you know how much Bader derived in gross revenues from the transportation of household goods and other commodities across state lines? A. In excess of $50,000.

Q. Now, since March the 26th, of 1975, has Bader Brothers continued to receive revenues? A. Rent, income from assets, accounts receivables.

Q. Any other income? A. Rental of trucks.

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16 Court Street,
Brooklyn, New York
Thursday, September 18,
1975.

124 * * * * *

A. Bader Brothers.

Q. Bader Brothers Warehouses, Inc.? A. Yes, Bader Brothers Warehouses, Inc. and is so stated in the lease agreement.

Q. Who owned the warehouse? A. Bader Brothers Warehouses, Inc.

Q. Was the office located in the warehouse? A. It was part of the building.

Q. Where was the maintenance shop located?

A. Part of the building with a separation. It was part of the structure of the building, in the rear of the warehouse.

Q. Was the entire warehouse, including the office and maintenance shop leased to Golden Cycle? A. Yes, it was.

Q. Who receives the rent from Golden Cycle on that lease? A. Bader Brothers Warehouses.

Q. Where were your trucks garaged? A. On the premises at 475 Underhill Boulevard.

Q. Was there also a furniture repair shop? A. We called it a repair shop. It was a compartment that was built within the warehouse to install materials so that we could repair damaged articles that we had to fix.

This consisted of a space of 10 by 20 feet.

125 Q. Was all the equipment and fixtures in the warehouse, maintenance shop, the repair shop and the office sold to Golden Cycle? A. No.

Q. What was left out? A. There were certain equipment that -- such as files and things that were necessary for us to continue to store our records in conjunction with Internal Revenue and the Interstate Commerce Commission. A few desks, chairs.

We had some lots in the warehouse, household goods that belonged to us that were not part of the transaction.

Q. You mean items that were stored for someone else? A. Yes, that had been stored and --

JUDGE BISGYER: Not reclaimed?

THE WITNESS: Not reclaimed, so they belonged to us.

Several pieces of old equipment that were no longer usable belonged to us.

Q. What do you mean by that? A. Well, an old truck that we had.

Q. I'm not talking about vehicles. A. Just -- that's it.

Q. In the warehouse Bader Brothers also had stored merchandise for its customers? A. Yes.

Q. What happened to that merchandise?

126 A. We notified the customers that we were going out of business and that they could make whatever arrangements they wanted to.

Q. Did most of the material remain in the warehouse? A. No, several of the accounts moved out. One of the large accounts was Jawar, very substantial account, and as I can recollect Kollsman Instruments moved out and maybe several other accounts which I wouldn't know offhand.

Q. When did you notify your customers that you were going out of business? A. Prior to the March 17th date. Sometime in, I believe it was January, February, I'm not sure.

JUDGE BISGYER: 1975?

THE WITNESS: 1975.

Q. When did you stop taking orders for moves? A. We stopped taking orders for moving the week of the 17th.

Q. March? A. Of March, 1975, and just cleared up several of the moves that we were engaged in.

One specifically was a commercial move with Kollsman Instrument.

Q. You stated before the transaction, how many employees were working for you under the 814 con-

tract? A. Talking about prior to September 1st or
127 March? What? What date?

Q. Just before March 25th. A. Under contract, under Local 814?

Q. Yes. A. We had approximately nine men, drivers helpers, warehousemen.

Q. Packers? A. Packers.

Q. Were there 12 men on the seniority list? A. I don't recall.

MR. FRIEDMAN: May I have this marked as Respondent's Exhibit 1.

(Document marked Respondent's Exhibit 1 for identification, of this date)

Q. Mr. Bader, I show you Respondent's Exhibit 1 for identification. Do you recognize that as the seniority list for the Local 814 employees? A. I recognize Tom Coppinger, Tom Towell, Lee Worden, Bob Mansfield, Bob Outwater, Frank Kuhn and Andrew Blazo, John Scales, Hank Hanna.

The other three were not working for us at that time, were not shaping up on a regular basis.

Q. Dare? A. Dare, Mike Nolan and Tom McCarthy.
128 I don't even know Tom.

Q. Do you know when was the last time any of those three worked for Bader Brothers? A. Noland -- I don't know. I think he quit somewhere in '73, somewhere, April or May, I'm not sure. I'm not sure of this information but I know he wasn't around during this transition period.

Q. For how long had there been nine men working

under the 814 contract? A. To the best of my recollection I'd say for approximately six months.

However, I must add at this time, being president of the company and being involved in serious negotiations, a lot of executive duties, I can't categorically say that I know exactly at this moment, and I would prefer the possibility of getting those answers, they are of record.

Q. Mr. Bauer would have more information? A. He perhaps would have more information.

Q. In your transaction with Golden Cycle were there any tractors that were not sold to Golden Cycle? A. Yes.

Q. Do you know how many? A. Six.

Q. Did you sell them to anyone else? A. We sold one tractor that I recall, to American
129 Security Van Lines, Atlanta, Georgia, and we rented five tractors to American Security Van Lines, Atlanta, Georgia, to the best of my knowledge.

Q. All those tractors were taken by American into Georgia? A. They were in Georgia.

Q. They were in Georgia at the time of the sale? A. Yes.

Q. Had they ever been in Syosset? A. Yes.

Q. When did they go down to Georgia? A. I don't recall the exact date but they had been on rental for the year of 1974.

Q. Was that under a Bushwick rental? A. Yes.

JUDGE BISGYER: What do you mean by that?

Q. Who is Bushwick? A. Bushwick Trailers was our equipment corporation that leased and rented tractors, trailers in conjunction with our overall

operation at the Syosset terminal.

Q. What was the name of that company? A. Bushwick Trailers, Inc.

Q. That company didn't have a contract with Local 814? A. After negotiations in 1971 --

Q. Mr. Bader, did Bushwick Trailers sign a
130 contract with Local 814 for the 1944 - 1977 contract? A. I have to explain the position. May I explain it, please?

Q. This is a yes or no answer.

MR. SCHAER: Let the witness answer. He wants to give you an answer. A. (Continuing) Let me give you an answer that can clear this matter up.

JUDGE BISGYER: You say you cannot give a yes or no answer?

THE WITNESS: I would say yes.

Q. Do you have a copy of that contract? A. No.

Q. Is there such a copy existent? A. No.

Q. You never signed a contract for Bushwick Trailers in 1974 with Local 814; isn't that correct? A. I still would like to explain what happened in '71 at negotiations.

Q. We are not talking about 1971. A. It would clear the matter up.

JUDGE BISGYER: We will take the testimony.

THE WITNESS: May I?

In 1971, during negotiations, the discussion came up at many of the companies of the New York area at several companies that they were involved in.

* * * * *

131 President Aiello of Local 814 addressed me personally and said "You have Bushwick Trailers, Inc.? You have Bader Brothers Warehouses Inc., Bader Brothers Van Lines Inc.?"

I said yes. He said "We want you to agree", which I did, "that all these companies would be under the signing of the contract, so that any men used in the normal usage of the contract for packers, helpers, warehousemen, drivers would be covered", and –

MR. FRIEDMAN: Objection. I move all that be stricken, Judge Bisgyer.

JUDGE BISGYER: I think –

THE WITNESS: It is a normal course of business.

JUDGE BISGYER: I think he is answering your question as to whether or not he had a contract with a respondent.

MR. FRIEDMAN: On the contrary.

JUDGE BISGYER: For those individual companies.

MR. FRIEDMAN: He is saying, as I understand his testimony, that Bushwick was a rental outfit and this company is renting these tractors to American Security, not Bader Brothers Warehouses, Inc.

That is the company that Local 814 has a contract with, not with Bushwick.

THE WITNESS. I'm also –

MR. FRIEDMAN; There is a substantial question here

apparently about the nature of the business, whether they were sold in the normal course of whose business.

MR. SCHAER: I object. That was not the testimony that we just heard.

JUDGE BISGYER: I will permit the answer to remain in the record.

As I understand Bader Corporation has some interest in Bushwick.

THE WITNESS: Yes, the same stockholders of Bader Brothers Warehouses Inc. are the same stockholders of Bushwick Trailers and the same stockholders of Bader Brothers Van Lines.

I never hid the fact, it has been open that any labor that was used in conjunction with the normal use of the contract within any corporation would be subject to the contract.

For example --

Q. No for examples.

JUDGE BISGYER: Ask the next question.

Q. What was the business of Bushwick Trailers?

A. Bushwick Trailers was in the business of owning the equipment, leasing the equipment to Bader Brothers Van Lines, Bader Brothers Warehouses, other companies, renting and buying and selling equipment as a normal course of business and repari

133 ing and maintenance.

Q. The corporate entity Bushwick Trailers never signed a contract with Local 814; is that correct?

JUDGE BISGYER: Physically sign?

A. Physically, no.

Q. In your transaction with Golden Cycle were

any trailers not sold to Golden Cycle? A. Yes.

Q. How many? A. To my recollection, six.

Q. What happened to those six? A. One was sold to American Security Van Storage and five have been on rental to American Security Van.

Q. I'm talking about the trailers now. A. The trailers?

Q. And tractors. A. Also. You asked me that question before and I answered it.

Q. The numbers are coincidentally the same? A. Yes.

Q. When did those transactions take place with American Security? A. I don't recall when the sale of the one piece of equipment was but it was -- I don't recall exactly. Either sometime in '74, late '74, early '75, but the five tractor trailers
134 have been on rental for the entire year of 1974 and still are.

Q. And the income from those rentals goes to Bushwick Trailer? A. Yes.

Q. In your transaction with Golden Cycle were any other vehicles not sold to Golden Cycle? A. Several cars were not sold that were owned by Bushwick Trailers.

Q. Owned by Bushwick Trailers? A. Right.

Q. What happened to those cars? A. Well, they remained in Bushwick Trailers.

Q. Were those personal automobiles? A. Yes.

Q. Anything else? A. To my recollection that is all the vehicles.

Q. At the time of your transaction with Golden Cycle what were the value of your accounts receivable?

MR. SCHAER: I object to that question. It was testified earlier that the accounts receivable were not sold as part of the transaction so I don't see what relevance it has to this case.

JUDGE BISGYER: What is the significance of the accounts receivable that it retained for itself? If it is $1,000 or $200,000?

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* * * * *

136 A. The purpose is that we may and have been thinking seriously, once we get through the process of winding down what we are doing, of going in to some other kind of business, not the moving and storage business. We are phasing out of the moving and storage business.

That total answer would be decided later on, certainly not now as to possible liquidation, but our business, our operations, our corporation, is still viable, still open to do whatever we want to do with it, outside of remain in the moving and storage business.

MR. FRIEDMAN: Can I ask the general counsel what his position is as to whether Bader Brothers is simply remaining to winding up its affairs and to liquidate itself?

MR. WEINRICH: It is general counsel's position that Bader Brothers at the times prior to March 26, 1975 was engaged in the moving and storage industry and engaged in performing related services regarding the moving and storage and transportation of household goods, that as of March the 26th, 1975 Bader Brothers Warehouses Inc. stopped engaging in that business and the corporate entity is

presently engaged in winding up its affairs in that business.

However, the corporate entity does still exist and is, pursuant to the testimony of the witness,
137 certainly engaged in certain operations up to this point such as being the landlord of a warehouse and may in the future, according to the testimony of the witness, engage in other endeavors, but since March 26th it has not engaged in providing and performing moving and storage services.

Q. Does Bader Brothers have an office now? A. My office presently, the executive offices presently are at my home, 112 Reed Drive, Roslyn, New York.

Q. It is in your home? A. In my home.

Q. And the other office? A. We are occupying some space at 475 for the purposes of winding down some of the necessary business and the correspondence that is coming in.

We don't pay any rent, we don't do anything. Just kind of getting our papers and getting things that are necessary to the moving and storage business, but outside of that, all business at the present time is at an executive level, corporatewise, is being run out of 122 Reed Drive.

Q. You have a business phone number? A. I have two phone numbers.

Q. Yes? A. Pioneer 6-2056 and 248-2485.

* * * * *

141 effect, they were to take over March 18th and they defaulted.

Q. In May of '73 you testified Bader Brothers sold a warehouse on Atlantic Avenue? A. In Brooklyn, yes.

Q. To whom? A. Coventry Moving and Storage Company.

Q. How many 814 employees were employed in the warehouse on Atlantic Avenue? A. Approximately five or six.

Q. Do you know what happened to those employees? A. Jack Leone, the warehouse foreman went to work for Coventry, Jasper Shaw, a helper, went to work for Coventry.

I can't remember the other driver at the moment, went to work for Coventry. That's all I know.

Q. So the ones you know about went to work for Coventry? A. Yes, three, I'm sure, went to work for Coventry.

Q. In 1971 you testified you sold some of your local equipment? A. Yes.

Q. How much of it? A. Yesterday when this question came I was giving an educated guess. I think that questioning of my general

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remaining in Bader Brothers at the time of your transaction; is that correct? A. All right, all I am asking you is to be specific. What information you want? We will give it to you.

Q. That is the information we want. Do you have any other accounts receivable? A. Not to my recollection at this time.

MR. SCHAER: I think the witness testified that he has installment payments due.

MR. FRIEDMAN: The witness is testifying, not you, Mr. Schaer.

MR. SCHAER: Well, I think you confuse the witness when you asked about accounts receivable.

MR. FRIEDMAN: The witness understands what I said quite well.

MR. SCHAER: He didn't say he understood.

MR. FRIEDMAN: Judge Bisgyer, I have no more questions at this time but I think the understanding was when we receive the original of GC-5 and 6 we will have further opportunity to examine?

JUDGE BISGYER: Yes.

Redirect?

REDIRECT EXAMINATION

Q. (By Mr. Weinrich) Mr. Bader, during the course of questioning by Mr. Friedman of you in relation
149 to the transactions set forth in General Counsel's Exhibit No. 5 in evidence the names of several other corporations came up, Bushwick Trailers Inc., Bader Brothers Van Lines Inc. as well as Bader Brothers Warehouses, Inc.

Who is the president of Bushwick Trailers Inc.? A. I am.

Q. Who is the president of Bader Brothers Van Lines Inc.? A. I am.

Q. Who are the officers of Bushwick Trailers, Inc.? A. Herman Bader, Edward Bader, Daniel Bader and George Bader.

Q. Who are the officers of Bader Brothers Van Lines Inc ? A. Herman Bader, Edward Bader, Daniel Bader and George Bader.

Q. Who are the officers of Bader Brothers Ware-

houses Inc.? A. Herman Bader, Edward Bader, Daniel Bader and George Bader.

Q. Now, I believe that you testified as to the business of Bushwick Trailers, Inc.

What is the business of Bader Van Lines Inc.? A. Bader Brothers Van Lines Inc. was the operator of a long distance van lines certificate, did the long distance moving under the ICC certificate 5850.

151 * * * * *

Q. How many mechanics? A. Three mechanics and a foreman.

Q. Were these mechanics and/or foremen, to your knowledge, represented by any labor organization? A. No.

Q. How many employees were employed by Bader Brothers Van Lines Inc.? A. Approximately 16.

Q. What types of employees were these? A. The officers of the corporation and people employed in the office.

Q. Were any chauffeurs employed? A. Not by Bader Brothers Van Lines.

Q. Who operated vehicles for Bader Brothers Van Lines? A. Bader Brothers Warehouses Inc. and the men under contract to Local 814 when those jobs were assigned to them.

Q. Who set the labor relations policy for Bushwick Trailers Inc., if anyone? A. The policy? I don't understand the question.

Q. Bushwick Trailers employed certain employees. Who set personnel policies with Bushwick Trailers Inc? A. We have a company policy.

Q. Who formulated that policy? A. I'm the one that is responsible for it.

152 Q. Who is responsible for the personnel policies of Bader Brothers Van Lines Inc.? A. I am.

Q. And for Bader Brothers Warehouses Inc.? A. I am.

Q. I asked you who formulated the policy for those three companies. Who administered the policy for those three companies? Who carried out those policies? A. The general manager, Fred Bauer.

Q. For all three companies? A. For all three companies.

Q. The other hard assets listed in General Counsel's Exhibit No. 5, the office equipment, who owned that office equipment? A. As I -- best of my recollection some of it was owned by Bader Brothers Van Lines, some of it was owned by Bader Brothers Warehouses, and some little equipment Bushwick Trailers owned down in the maintenance shop, office equipment.

Q. What about the warehouse equipment? A. The warehouse equipment was owned by Bader Brothers Warehouses, Inc.

Q. The furniture and repair shop equipment? A. Bader Brother Warehouses.

Q. The truck repair and maintenance shop

153 equipment? A. Bushwick Trailers Inc.

Q. How long had Bushwick Trailers Inc. been in existence prior to March 25, 1975? A. Since 1952.

Q. And Bader Brothers Van Lines Inc? A. Since 1952.

Q. Was there any corporation owned by the name Bader Brothers, Inc? A. Yes.

Q. Which corporation was that? A. That was the corporation that existed prior to 1952 in which the various corporations that you questioned me on were spun off into Bader Brothers Van Lines Incorporated, Bader Brothers Warehouses Inc., Bushwick Trailers, Incorporated.

Q. Prior to 1952 did Bader Brothers Inc. have a collective bargaining agreement with Local 814? A. It did.

Q. Do you recall if at the time of the spinoff or what you testified to be a spinoff was given to Local 814? A. I don't recall.

Q. When a long distance interstate move was made under the ICC rights of Bader Brothers Van Lines Inc., who paid the slary of the driver?

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155 MR. WEINRICH: The purpose of this line of questioning, your Honor, is to show that the three corporations named in General Counsel's Exhibit No. 5 had common ownership, common operators and common directors; that they administered a common labor policy and were in fact under law single integrated business enterprises.

MR. FRIEDMAN: Judge Bisgyer, there has been no mention in the exhibit of any of these other companies.

JUDGE BISGYER: Well, I think that this developed

in connection with your tracing income from various sources going to which (phonetic) companies.

But do you think you have to go into the subject any more? I think it is pretty clear on the record that there is an interrelationship between all these corporations.

MR. WEINRICH: I think I have gone into it sufficiently.

JUDGE BISGYER: I will sustain the objection.

MR. WEINRICH: As to my last question?

JUDGE BISGYER: Did he answer the last question? Do you want the answer now?

MR. WEINRICH: Yes.

JUDGE BISGYER: All right, give that answer.

Then you will decide whether or not any further testimony is necessary with respect to the purpose of these questions.

* * * * *

161 Q. Do I understand that Bushwick Trailers was set up to supply and maintain the vehicles for Bader Brothers Warehouses Inc.? A. Yes, and for other rental purposes, other lease, rental purposes, where ever, other companies.

Q. When Bushwick Terminals? A. That is right.

Q. Or trucks where they bought for the use of Bader Brothers Moving and Storage business (phonetic)? A. Yes, plus for rental purposes for other outside usage.

Q. Did Bader --

MR. WEINRICH: Your Honor, just so the record is clear, you said Bushwick Terminals.

THE WITNESS: Bushwick Trailers.

MR. FRIEDMAN: Bushwick Trailers.

Q. Did Bushwick Trailers ever buy vehicles for the purpose of renting that vehicle to someone other than Bader Brothers or Bader Brothers Van Lines? A. Yes.

Q. When? A. Over the course of our business we have had freight trailers that we purchased and rented out to whoever wanted to rent it. Other movers, other people were using our trailers for mobile storage. We rented out tractors like Avis or Hertz on occasion, the straight vans.

162 Q. These are vehicles that you purchased primarily for the use of your Bader Brothers moving and storage business; is that correct? A. Not always.

Q. Do you have documents which could show which vehicles were purchased for the purpose they were purchased? A. How would you answer a question like that? You buy vehicles for the purpose of renting and leasing to the other corporations as well as anybody that wants to use them.

Any vehicles we owned were for general usage, not the moving and storage business.

Q. What kind of vehicles were they? A. Freight trailers not normally used in the moving and storing business.

Q. What is a freight trailer? A. A freight trailer that is normally used for the hauling of merchandise, goods as compared to household goods.

It is not a drop frame trailer. We purchased rigging equipment.

Q. Just a moment, let us start on the freight trailers. The freight trailers are used in the moving and storage business, are they not? A. Not commonly.

163 Q. But they are used? A. Not commonly.

Q. You use them, have you not? A. Yes.

Q. In 1973 how many vehicles did Bushwick Trailers buy? A. I don't recall.

Q. Did they buy any? A. I wouldn't have any recollection at this moment. I wouldn't have any specific information.

Q. In 1972 how many did they buy? A. I don't recall.

Q. Did they buy any? A. No, I don't know what year -- it was sometime after '71 that we purchased 10 or 11 tractors. The register will show it.

I have no way of --

MR. FRIEDMAN: Judge Bisgyer, I would like to call for the production of the books and records of Bushwick Trailers for the past five years showing the sales, purchases and rentals of any kinds of vehicles between Bushwick and the purchaser or lessor, Bushwick and Bader Brothers, Bushwick and anybody else.

MR. SCHAER: I don't see the relevance of this but in any case, earlier I thought it had been agreed by counsel for the respondent that he would hold off any such

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166 In other cases answering questions or problems

that arise from time to time.

Q. What have your duties been and how have you occupied your time as general manager since March the 25th, 1975? A. I have been involved in obtaining moneys that are due us and are on our accounts receivable list.

I have also been involved in paying our obligations, bills, invoices, et cetera.

I am involved in claims that are still pending, claims in connection with both Bader Brothers Warehouses and Bader Brothers Van Lines, and any other general mail or correspondence that may come to my attention.

Q. Are there any employees presently under your supervision? A. Yes.

Q. How many? A. One.

Q. What does that employee do? A. She is my secretary and she types letters and correspondence, does filing and helps me generally.

Q. Where do you physically transact this business from? A. Major bulk of it is transacted at 475 Underhill Boulevard.

Q. Have you been present at that location on any sort of a regular basis since March 25, 1975?

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Q. When was the next conversation? A. It was on March 18, 1975 which was with Phil Doran who had come to the office at 475 Underhill Boulevard and he had asked me what was happening.

I told him that Bader Brothers was going out of the moving and storage business, that I had

officially given notice to all of the men the previous day and that we were in the proceeds of winding down our part of the business.

He asked me about what Herman Bader was going to do. I told him he was on his way to Florida at the time or already in Florida, in Jacksonville, trying to negotiate for the sale of the ICC certificate.

He asked me what I was going to do. I told him that for the moment I was going to continue on as manager and wind down the business, and that what I would do after it was all wound down I wasn't sure of.

He also asked me about Golden Cycle, were they going to -- let me just refer to my note, please.

Q. Before you look at anything, Mr. Bauer, do you recall anything else that was said without referring to anything? A. Just general conversation in which he had said something about from time to time he runs across companies who are looking for people in my capacity and would I be available
179 for work.

Q. Do you recall any conversation, further conversation concerning the subject matter of the transaction between Bader and Golden Cycle? A. No.

Q. You testified that you had told Mr. Doran that you had had a conversation with employees on March 17th.

Did you in fact have such a conversation? A. On March 17th? Yes.

Q. With which employees of Bader did you speak? A. All of the men on our seniority list who were present that day.

Q. Where did the conversation take place? A. In the conference room at 475 Underhill Boulevard.

Q. Aside from the men on the seniority list was anyone else present? A. Not that I can recall.

Q. Will you tell us what you said at that time, if anything? A. Yes, I told him that I was taking the place of Herman Bader who couldn't be here, but I had the unpleasant task to tell them that Bader was sinding up his operations in the moving and storage business and the last two jobs which were currently in progress were the last jobs we were going to be doing.

I told them that this was necessitated out of

* * * * *

184 period? A. 49.

Q. What types of vehicles were these? A. Tractors, trailers, straight vans, fork lifts, cars, station wagons.

Q. Do you have in your possession any schedule of the vehicles sold? A. Yes.

Q. May I have it, please.

MR. WEINRICH: May we mark this as General Counsel's Exhibit 15 for identification?

(Document marked General Counsel's Exhibit 15 for identification, of this date)

JUDGE BISGYER: Is that exhibit consisting of

three pages?

MR. WEINRICH: Yes, it is, three handwritten pages.

Q. I show you General Counsel's Exhibit 15 marked for identification and I ask you from what you prepared that schedule. A. From the equipment ledger of Bushwick Trailers.

Q. Do you have the equipment ledger with you? A. No.

MR. WEINRICH: Your Honor, I ask that General Counsel's Exhibit 15 marked for identification be admitted into evidence as an abstract of the company's books and

* * * * *

209 moment, are you going into a different area than you are questioning concerning a statement?

MR. FRIEDMAN: Yes.

MR. WEINRICH: Your Honor, may I have a five minute recess? I know it is unusual but I would like to consult.

JUDGE BISGYER: We will have a short recess.

(Short recess taken)

JUDGE BISGYER: The hearing will resume.

Q. (By Mr. Friedman) Mr. Bauer, you are not an officer of Bader Brothers? A. No, I am not.

Q. Are you related to any officers? A. Yes.

Q. How and who? A. My sister is married to George Bader.

Q. Who is George Bader? A. He is one of the officers.

Q. Do you know which one? A. What his capacity

is, you mean?

Q. Yes. A. No, I don't.

Q. Bushwick, Bader Brothers and Bader Vans are separate corporations; is that correct? A. Yes.

Q. But Bushwick operates basically out of
210 Florida; is that correct? A. No, Bushwick operates basically out of 475 Underhill Boulevard.

Q. Does Bushwick operate also in Florida? A. By virtue of the fact that the trucks it owns go down to Florida, yes.

Q. How does that occur? A. The trucks are leased to Bader Brothers Van Lines. These trucks, in turn, are dispatched by the dispatcher to go to various parts of the country, including Flordia.

Q. Trucks that Bushwick owns are leased to Bader Brothers Van Lines? A. Right.

Q. Is that the long haul operation? A. Yes.

Q. Is that the owner-operator operation? A. Partly.

Q. Are any of the trucks that Bushwick owns leased to Bader Brothers Warehouses? A. Yes.

Q. What percentage? A. Of all the trucks that Bushwick owns?

Q. Yes, we are talking about prior to the transaction with Golden Cycle; you understand that. A. Yes, but all of the trucks that Bushwick
211 Trailers owns, what percentage is leased to Bader Brothers Warehouses?

Q. Yes? A. 30 to 40 percent.

Q. Are the remainder leased to Bader Brothers Van Lines? A. Not totally. Mostly though.

Q. Who else would the Bushwick Trailers be leased to? A. Various companies that would rent or lease trailers from us, mostly trailers as opposed to tractors or power equipment and who would use it for various reasons.

Q. Just prior to the sale to Golden Cycle, how many of the trucks that Bushwick owned were leased to companies other than Bader Brothers and Bader Brothers Van Lines? A. Perhaps 10 percent.

Q. Was that to American Security? A. No.

Q. To whom was that? A. Various individual companies.

Q. Were these trucks that Bader Brothers or Bader Van Lines didn't need for those two operations? A. I wouldn't put it that way. They were pieces of equipment that may have been leased for some time and it wasn't a question of whether we needed it or not needed it.

They were there in the fleet to be used, sold or

* * * * *

213 Q. How many trucks were involved? A. Just one.

Q. Where did you get that truck from? A. A tractor dealer in used equipment, dealer in used equipment. I don't remember just where.

Q. Was it from an owner operator? A. From?

Q. Yes. A. No.

Q. Was it for an owner operator? A. Yes.

Q. Was it for an owner operator who operated under the authority of Bader Brothers Van Lines? A. Yes.

Q. Were the 10 percent of the trucks that you mentioned earlier in your testimony that were leased, were they leased to owner operators? A. Some of them were, but the ones I was referring to applied mostly to the trailer equipment which was rented to other companies.

Q. And these trucks, of the 10 percent that were leased to owner operators were leased to owner operators operating under the authority of Bader Brothers Van Lines? A. Yes.

Q. Can you recall anything prior to 1974 where Bushwick

* * * * *

226 THE WITNESS: Yes.

JUDGE BISGYER: And it is the Golden Cycle office?

THE WITNESS: Yes.

Q. The trucks are weighed and the driver goes to get the weight from the office, that is how it works? A. That is right.

MR. FRIEDMAN: That is all, thank you.

JUDGE BISGYER: You are excused.

(Witness excused)

Do you have any other witnesses to call?

MR. WEINRICH: Not at this time, your Honor.

General counsel has no further witnesses to call, and after a short amendment to the complaint general counsel intends to rest its case.

JUDGE BISGYER: Are you ready to proceed? I want to make sure that you are.

MR. FRIEDMAN: I am.

JUDGE BISGYER: Are you ready to make your

motion at this time?

MR. WEINRICH: Yes, I am, your Honor.

JUDGE BISGYER: Will you proceed?

MR. WEINRICH: General counsel at this time seeks to amend Paragraph 2A of the complaint to read "Bader, Bader Van Lines, Inc. and Bushwick Trailers Inc. are and have been at all times
227 material herein corporations duly organized and existing by virtue of the laws of the State of New York."

General counsel seeks to amend Paragraph 2B of the complaint to read "That at all times material herein until on or about March 26, 1975 Bader and Bader Van Lines Inc. maintained their principal office and places of business at 475 Underhill Avenue in the Village of Syosset, County of Nassau, State of New York, herein called the Syosset Warehouse where they have been at all times material herein continuously engaged in providing and performing moving and storage services and related services by storing household goods and other commodities in this warehouse and by transporting household goods and commodities locally and in interstate commerce."

The remainder of that paragraph with the addition to the words "Bader Van Lines, Inc." on the third line of that paragraph following the word "Bader" will remain the same.

General counsel also seeks to amend the complaint in Paragraph 2D by adding "Bader and Bader Van Lines, Inc. are and have been at all times material

herein -- " I withdraw that, your Honor.

General counsel would like to, in place of the present paragraph 2D of the complaint, substitute in its place Paragraph 2D reading "Bushwick
228 Trailers, Inc. is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of New York."

General counsel seeks to add Paragraph 2E to the complaint reading "At all times material herein until on or about March 26, 1975 Bushwick Trailers Inc. maintained its principal office and place of business at 475 Underhill Avenue in the Village of Syosset, County of Nassau, State of New York, herein called the Syosset Warehouse where it was and had been at all times material herein continuously engaged in the business of buying, owning, operating, maintaining, selling and leasing trucks, tractors, trailers and other vehicles."

JUDGE BISGYER: What allegation was that?

MR. WEINRICH: It would be Paragraph 2E of the complaint.

JUDGE BISGYER: It is in addition?

MR. WEINRICH: It is in addition.

General counsel also seeks to add Paragraph 2F of the complaint to read: "Bader, Bader Van Lines, Inc. and Bushwick Trailers Inc. hereinafter collectively called Bader, are and at all times material herein have been affiliated businesses with common officers, ownership, directors and operators and constitute a single integrated

business enterprise, the said directors and
229 operators formulate and administer a common labor policy for the aforementioned companies affecting the employees of said companies."

General counsel then wishes to add Paragraph 2G of the complaint to read: "Bader is and has been at all times material herein an employer and a person engaged in commerce and in an industry affecting commerce within the meaning of Section 2(1) (2) (6) and (7) and 8B 4 of the act."

JUDGE BISGYER: Any objection?

MR. FRIEDMAN: Any objection Judge Bisgyer? This is outrageous, truly outrageous!

We start at the beginning of this hearing and general counsel changes the object, the Bader-Golden Cycle argument that we had the first day of this hearing.

When the complaint was drafted and then a hearing, there is another object that union has, a different object that the union has and now after two days of hearing we don't have an amendment to the complaint here to conform to pleadings of the proof, this is not a formality, this is changing the entire structure of their case.

We are bringing in now two separate entities, two additional separate entities, Bushwick and Bader Brothers Van Lines Inc.

230 Not only separate entities but now the general counsel alleges they are a single integrated organization, all apparently for this purpose which you had originally I believe wanted to exclude

concerning the testimony about the nature of the trucks that are sold, rented and bought by Bushwick Terminals.

Now, if we are going to try a case before the Labor Board how can we do it in that fashion? First the object is changed and now the entire structure of the case is changed and I object to it.

MR. WEINRICH: Mr. Friedman has insisted from the beginning of this hearing to make what I consider to be, and he starts off his inflammatory speech now as a mountain out of a molehill over a clerical error.

MR. FRIEDMAN: Just a moment, there was no clerical error here.

JUDGE BISGYER: Counsel is entitled to argument. I will decide whether or not it is a clerical error or otherwise. I permitted the amendment.

I will also permit counsel to reply to you and then I will issue my ruling after Mr. Schaer has his say.

MR. WEINRICH: And in the opinion of general counsel the amendment that is sought to be made at this time is not the major revision that Mr. Friedman makes it out to be.

231 The essence of this dispute comes from a transaction which is described in Paragraph 9 of the complaint where it describes what type of transaction Bader entered into with Golden Cycle; that certain fixtures and equipment, including office equipment, warehouse equipment, repair shop

equipment, truck repair and maintenance shop repair equipment and trucks and trailers were transferred by sale and lease.

What has come out in the evidence is that Bader did not do this all by itself because there were three separate corporate entities, and together those three separate corporate entities engaged in that transaction were Golden Cycle which leads us here today.

In substance, all general counsel is doing is changing the names of the parties to conform with what has been introduced in evidence, and the fact that they are now alleged to be a single integrated business enterprise, we held them before to be a single integrated enterprise under one name because that was the only name we had thought the transactions took place under.

Now, there are three names adding up to the same single integrated business enterprise. I don't think there is any surprise at all or any difference than what was originally alleged, only
232 now we directly sort out the various players.

MR. SCHAER: First with respect to the so-called change of object.

JUDGE BISGYER: I have already ruled on this. Let us not go into this. I permitted the amendment.

Proceed.

MR. SCHAER: The union didn't say it was interested in it so I don't know why it is raising it at this point and in the same vein and I don't see how the union could be prejudiced by changes here.

They merely conform to the proof that was put into evidence and in fact that proof was for the most part elicited by the union, the respondent here, and it should not be surprised now, having elicited that proof that general counsel is seeking to amend the complaint to conform with this proof elicited by respondent.

The transaction, may I add, which is the heart of this case, does not change in any way because there are three names instead of one. Still one transaction that took place at Syosset.

JUDGE BISGYER: Mr. Friedman, do you need more time to prepare for the amendment? I am inclined to grant it.

The evidence went in and I am not going to undertake to determine whether you were surprised. I think a change of this nature could be surpris-
233 ing to anybody.

MR. FRIEDMAN: I am not going to ask for more time. I want this hearing to proceed.

JUDGE BISGYER: As I indicated I would like to be very candid with you, I do not want to deprive you of proper preparation for all the time you might need to prepare to meet those new allegations.

Those new allegations were tied up with some theory that the general counsel believes is applicable here and that is the theory that was propounded by the board in the National Maritime Union and Commerce Tankers case in 196 NLRB.

So if you want more time I will entertain a

motion. I will grant the motion to amend.

MR. FRIEDMAN: Might I take a short recess?

JUDGE BISGYER: We will have a short recess.

You might also decide whether or not you would like to have the original documents upon which GC-15 is based.

(Short recess taken)

JUDGE BISGYER: The hearing will resume.

MR. FRIEDMAN: Judge Bisgyer, the union is in an unfortunate position in that an arbitration is pending and picketing is pending, all depending on the outcome of this proceeding, and the union is reluctant to delay this proceeding any longer, so
234 I will not ask at this time for any additional time related to general counsel's new amendment.

I will say we do not consider this at all the proper way for general counsel to proceed in a matter of this sort. I would like that on the record.

JUDGE BISGYER: Are you ready to proceed with your witnesses?

MR. FRIEDMAN: I am.

JUDGE BISGYER: Before doing so I would like to ask counsel whether they had gotten together with respect to the arbitration proceeding.

I know some testimony went in with respect to the union's request for arbitration and so on, but I don't think a stipulation is in the record with respect to the status of the arbitration proceeding.

Will you gentlemen be able to get together on

that phase of the case?

MR. FRIEDMAN: May we go off the record a moment?

JUDGE BISGYER: Off the record.

(Discussion off the record)

JUDGE BISGYER: On the record.

MR. FRIEDMAN: I call Mr. Martelli.

JUDGE BISGYER: Will you make the statement with respect to the status of the arbitration proceeding for the record?

235

MR. WEINRICH: Yes, your Honor.

I have been advised by the parties that the arbitration matter concerning the dispute between the parties is presently pending, there having been no testimony taken before the arbitrator.

MR. FRIEDMAN: That is accurate. I would simply add no testimony taken on the merits of the dispute.

JUDGE BISGYER: The record will so indicate.

Whereupon,

CHARLES MARTELLI

was called as a witness and, having been first duly sworn, was examined and testified as follows:

JUDGE BISGYER: Be seated.

State your name and address.

THE WITNESS: Charles Martelli, M-a-r-t-e-l-l-i, 1679 Unionport Road, Bronx, New York 10462.

DIRECT EXAMINATION

Q. (By Mr. Friedman) Mr. Martelli, do you hold a position with Local 814? A. Yes, I do.

Q. What is that? A. Secretary treasurer.

Q. How long have you held that position?

A. Since 1969.

Q. What are your duties as secretary trea-
236 surer? A. Full responsibility of all the union's records, one of the principal officers of the local union and supervisor of all the actions and directions of the business representatives.

Q. Prior to 1968 or '69 had you held any other positions with the union? A. Yes, I did.

Q. What were they and the years covered? A. In 1965 I was trustee and business representative, covering Nassau and Suffolk Counties.

In 1967 I became recording secretary of the local until 1969.

In 1969 I took over as secretary treasurer.

Q. How long have you been a member of Local 814? A. Been a member of Local 814 since 1950.

Q. For how long have you been involved in the moving and storage industry? A. I have been involved in the moving and storage since 1950.

Q. Do you hold any other union positions involving the moving and storage industry? A. Yes.

Q. What is that? A. I am the director of the Household Moving and Storage in the United States
237 of the International Brotherhood of Teamsters.

Q. In your positions with Local 814 have you participated in contract negotiations? A. Yes, I have.

Q. How long have you participated in negotiations? A. I participated in contract negotiations since 1965.

Q. What has been your role in negotiations?

A. Since 1968 I was the principal negotiator for Local 814.

Q. And is the contract in evidence as General Counsel's Exhibit 4 the principal contract of Local 814? A. It is the present contract of Local 814, yes, it is.

Q. Are you familiar with Bader Brothers Warehouses Inc.? A. Yes, I am.

Q. How long has that company been under contract with the union? A. It has been under the Household Moving and Storage since I have been affiliated with the Household Moving and Storage and that goes back to 1950.

Q. What is the nature of Bader Brothers' business? A. The moving of household goods, commercial goods, warehousing of same, warehousing of freight goods, warehousing of any type of commodities, export packing, long distance moving, crating, what all the other companies do.

238 Q. What kind of work was performed by employees of Bader Brothers represented by the union? A. Well, they are chauffeurs, packers, helpers, warehousemen and hi-lo drivers, if they had hi-los.

Q. How many employers are party to the industry moving and storage agreement, General Counsel's Exhibit 4? A. 3,500.

Q. That is -- A. Employees.

Q. And employers? A. We have 300 employers at the present.

Q. You are familiar with Article 50B of that

contract? A. Yes, I am.

Q. About when was that first entered in the contract? A. 1965.

Q. What was the purpose of Article 50B? A. Well, to protect work for employees of a company taken over by another company.

Q. How are employees hired?

MR. SCHAER: I move to strike that. I think the contract speaks for itself and I don't see how this witness' testimony as to what he thinks the purpose is is meaningful here.

I think what we have to find out is what the contract says and how it was applied, not what he
239 thinks the purpose is.

JUDGE BISGYER: I will take the testimony over your objection.

Q. How are employees hired?

JUDGE BISGYER: Obviously it pertains to his purpose.

Q. How?

JUDGE BISGYER: Whether good motives would excuse an act which would otherwise violate the act is another story.

Q. How are employees hired by employers under the contract? A. Well, they are hired -- in several ways that they are hired. It is according to the area that you domicile.

Several employers, if they do need an expert packer or warehouseman and there are some available around, they hire themselves, knowing they had experience working for another company.

In other areas or even in the same area when the economy was good, the employers hired from the street and after 30 days, after they broke them in whichever way and whatever classification that the employer wanted them to work at, and worked 30 within 90 they would put them on the seniority list.

Q. Does the union have a hiring hall? A. No, the union has no hiring hall.

Q. Does each employer have a seniority list? A. Yes, each employer does have a seniority list. It has two lists. It has one list by classification which covers household moving and storage work and covers the men on the seniority list from Monday to Saturday on classification of seniority.

It then has also a second list which is a payroll seniority list, one straight list for commercial work or new distribution work.

Q. How does an employee get on the seniority list? A. He works 30, any 30 within 90 entitles him to a spot on the list.

Q. How is it determined which employees receive work from the employer? A. Well, on household goods the man with the most seniority in that classification gets the work before anyone in back of him and it is according if they need one truck and three helpers, they take the top chauffeur from the classification list of the chauffeurs and two helpers.

If it is a combination, then they would take

one chauffeur from the list, one helper and maybe one packer.

If it is a commercial job and it is a straight list by payroll seniority, then you would go down the list and you would take as many men as you
240a need to cover that particular move in the commercial field.

Q. Commercial work is higher paid work? A. Commercial work and new distribution work is the highest paid work we have in our industry in moving the stuff.

Q. Under the contract, if one employer takes over another employer what happens to the employees of the former employer? A. They get hired and they work for the company that takes over.

241 Q. Are you referring particularly to Article 50B and Article 21H in the contract? A. Yes.

Q. When did you learn the Golden Cycle took over the operation of Bader Brothers? A. On the 17th or 18th of March, after a meeting when I got into the office.

Q. 1975? A. 1975.

A business agent by the name of Joseph Dametra reported that he received a phone call.

MR. WEINRICH: Your Honor, I assume that any testimony that is being offered as to what this witness was told by other representatives of the union is only being offered by counsel for the fact that it may have been said and not for the truth of the matters asserted therein as to knowledge.

JUDGE BISGYER: I will take the testimony as to whether or not the union knew regardless of what it source might be.

Q. You may answer. A. When I came in on the 17th after the meeting and any problem that any agent may have in their area must report to my office, report it to my office and Joseph Dametra told me they received a phone call from Tom
242 Coppinger who was shop steward of Bader Brothers and said that there was a meeting that was held, telling the members of Bader Brothers that they were going to be let go within ten days.

MR. WEINRICH: Your Honor, I move to strike.

Not only is this hearsay, but it is double hearsay.

JUDGE BISGYER: I will take the testimony and, of course, what actually transpired in these hearsay conversations will not establish the fact, although this will go the fact of the company or rather, that the union was aware that a certain situation prevailed and that it acted based on that information.

Proceed.

A. (Continuing) Then my partner who is Vincent Bracco and myself talked it over with Joe Dametra.

Q. Mr. Bracco is president of the union? A. Yes, he is.

Q. Go ahead. A. To send out telegrams to Bader Brothers and to Golden Cycle.

Q. Go ahead. A. Telegrams were sent out on the 20th or 21st signed by my associate, Vincent

Bracco, president of Local 814.

Q. Did you get a response from your tele-
243 gram to Bader Brothers? A. We got response from a telegram from Herman Bader stating that he was turning or handling the telegram over to Golden Cycle.

I think the receipt or -- I shouldn't say I think, I know definitely that the receipt of the telegram was the 25th of March.

We also received a letter from a gentleman, I don't know his name, Mr. Cross, I think, who was manager of Golden Cycle, stating -- and it was addressed to Vincent Bracco, president of Local 814, stating that that it was not profitable to abide by the union contract because of the operation, it was going to be different.

That was received in our office on March 26th.

Q. What did you do after you got these responses? A. We told the business agent to have the men picket.

We told the business agent to call up our attorneys to find out what would be the proper words that should be put on the sign.

Q. What did you want Bader Brothers to do?

MR. WEINRICH: Objection.

MR. SCHAER: Objection.

JUDGE BISGYER: I will sustain the objection.

MR. FRIEDMAN: You won't take the testimony, Judge Bisgyer, to what the union's purpose was
244 from the union officials?

JUDGE BISGYER: The union wanted Mr. Bader to

do something.

Develop the testimony as to what he had told the charging party to do.

Q. How many employees were on the Bader Brothers seniority list? A. What year?

Q. March, 1975? A. I imagine there were about 11, 11 or 12.

Q. I would like to show you Respondent's Exhibit 1 for identification.

Can you identify that? A. Yes, these are names of some of the people that I recognize that were working with Bader even when I was a business agent.

Q. Did you ask someone in your office to prepare a seniority list of the Bader employees for strike benefits? A. Yes, the girl in the office, the secretary in the office was told to type a list for the International for the people on the seniority list which had to be sent to them and which we -- that is how this list was made.

Q. Is this the list that she prepared? A. Yes.

MR. FRIEDMAN: I offer this as Respondent's Exhibit 1.

245 MR. WEINRICH: I object to the introduction of the list for the purpose offered, Your Honor.

I assume that the list is being offered as the seniority list of the Bader employees.

There has been testimony by agents of Bader that only the first nine names on that list were on the seniority list at the time in question.

Since the witness is unable to identify the list of his own knowledge and since the list is not kept in the normal course of union business but was prepared for a specific purpose by the union to be mailed into the International, I will object to the introduction of the list will be glad to stipulate that the first nine names on the list comprised Bader's seniority list as of March, 1975.

JUDGE BISGYER: Do you accept the proposed stipulation?

MR. FRIEDMAN: No.

JUDGE BISGYER: Was a copy of this seniority list sent to the company?

THE WITNESS: Every year the company send copies of seniority lists to the local office.

Not only seniority lists but they are supposed to send copies of what we call pocket lists also
246 on their letterhead to the office.

JUDGE BISGYER: Has this been done by Bader?

THE WITNESS: Well, I don't go into the detail.

Every company I'm assuming that is done or else the gent of the territory would have pulled the companies out on strike because it is a violation of the contract.

JUDGE BISGYER: You don't have them with you a list that the company has sent you if it has sent you one at all?

THE WITNESS: No, I haven't got.

JUDGE BISGYER: This is purely a list that was made intra office?

MR. FRIEDMAN: Perhaps I can develop that.

Q. Where did your secretary get these names from? A. From the list in the office.

Q. Which list? A. The seniority list and could be also the pocket list but she did get it from lists.

Q. What is a pocket list? A. At the last negotiations many of the companies had people that they -- extra people that the used to put on commercial work that were working with the companies for years.

At that time at negotiations the union stated that they would like a copy of this pocket list,
247 that if the company did have an additional 30 names and that they had a job running beyond their seniority list, that they were able to hire from their pocket list without having a problem, and they had a certain time and date to have this pocket list sent into the local union.

JUDGE BISGYER: I would tell you what I'm going to do, I'm going to take this document and as merely a statement of the union's position of what employees were on the seniority list at the time indicated and that is in March of 1975; is that what you are saying?

THE WITNESS: Yes.

JUDGE BISGYER: Well, it is their own statement.

It doesn't establish necessarily the fact.

MR. SCHAER: May we just establish on what date this particular list was prepared?

I don't think there is a date on it.

JUDGE BISGYER: I might also add I don't know how significant this particular document is except to indicate that some employees were employed at that time and the charging party's witness testified there were about 9 employed, so I don't know what the purpose is and why stipulation could not be accepted that at least a certain number were employed at that time.

MR. FRIEDMAN: I will accept that stipulation.

MR. WEINRICH: I will conceide that the first
248 nine names --

JUDGE BISGYER: I know we got the testimony in the record.

MR. WEINRICH: -- on this list or on that seniority list.

JUDGE BISGYER: All right.

Why don't you accept that as a statement that the first nine, and if you want, if you think that it is very important to establish the seniority of the other three individuals you will have the opportunity of presenting further testimony.

So the document will be received with the explanation I have afforded.

(Respondent's Exhibit 1 for identification received in evidence, of this date.)

JUDGE BISGYER: So that absolutely there is no question that the first nine names, is that what you said --

MR. WEINRICH: That is correct, Your Honor.

MR. SHAER: Yes.

JUDGE BISGYER: -- were employees at that time and on the seniority list.

Q. What kind of work does Golden Cycle do? A. They do household moving, commercial, packing.

MR. SCHAER: I will object to this line of questioning.

* * * * *

250 The man who is involved right in the industry, but you have testimony of the individual -- what is his name -- Cross -- who testified to their operation.

I will take this testimony and then evaluate, but bearing in mind what his knowledge is based on, just as Mr. Bader spoke about the custom in the industry.

Q. How does that work compare with the work performed by the former Bader employees? A. It is the same type of work.

Q. Is this work that has been customarily and traditionally performed by Bader Brothers employees? A. Yes, it is.

Q. How many of the former Bader Brothers employees picketed? A. I would say about 10 or 11.

Q. What was the purpose of the picketing? A. The purpose of the picketing is that, No. 1, Bader was in violation of not letting the Golden Cycle know that he did have an agreement, and the purpose of the picketing is to get work for the employees that worked for Bader that were taken --

that the company and the men should have been taken over by Golden Cycle.

JUDGE BISGYER: I might add that this would be a fertile field for cross-examining the witness with respect to his knowledge of Golden Cycle
251 operations.

Q. Was the union's picketing directed at Bader's violation of the contract that is contained in the March 20th telegram? A. Yes.

MR. SCHAER: I object but I think the signs speak for themselves.

JUDGE BISGYER: I will overrule the objection.

The statute speaks in terms of the objective of the union to do certain things. The evidence is really relevant.

Many times objective facts might contradict but that remains to be seen in this case.

Q. And the union picketed Golden Cycle also because Golden Cycle hadn't signed the contract? A. Right, because they didn't sign the contract.

MR. WEINRICH: I object as leading.

I would ask that counsel be warned.

JUDGE BISGYER: I will sustain the objection.

Rephrase your question. It was leading.

Q. When the union picketed Golden Cycle what was the union protesting? A. The union protested that Golden Cycle was not signator to the contract.

Q. Did Bader Brothers ever notify the union in writing that it was selling its operation to
252 Golden Cycle? A. No, it didn't.

Q. Do you know if Bader Brothers notified

Golden Cycle of the existence of your contract? A. Can't answer that.

Q. Did Bader Brothers notify you that it had notified Golden Cycle of the contract? A. The only thing they notified us on the telegram on the 25th stating that they would turnover the telegram that they received, that we sent out, his telegram to Golden Cycle.

It was dated the 25th of March, letting them know of their violation.

Q. Did Bader Brothers give the union notice of its transaction with Golden Cycle? A. No, it didn't.

Q. Did Bader Brothers require Golden Cycle to assume the obligations of the agreement? A. No.

Q. Did the union notice an arbitration of a dispute with Bader Brothers? A. Yes.

Q. Did Bader Brothers and the union jointly select an arbitrator? A. Yes, they did.

Q. Was the arbitrator -- arbitration hearing
253 convened? A. Yes, it was.

Q. Was it postponed? A. Yes, it was.

Q. At whose request? A. At the company's request.

Q. Did the union --

MR. SCHAER: Can we do this by stipulation?

MR. FRIEDMAN: Not that part of it.

MR. SCHAER: In an earlier stipulation we did.

JUDGE BISGYER: I will take the testimony.

Q. Are the employees of Golden Cycle represented by any union? A. Not that I know of.

Q. In the past three years how many operations covered by the industry agreement, General Counsel's Exhibit 4, have been taken over by other employers? A. Three One of them was --

Q. Can you name them? A. Yes, one of them was Weisberger, Fisher.

Q. Who took over who? A. Fisher took over the Weisberger Moving and Storage operation.

Q. When was that? A. About three years ago.

254 Q. What happened to the Weisberger employees? A. The Weisberger employees, well, it was on two lists. They were taken over and they gained or stayed with all their benefits that they had with Weisberger.

The operation runs separately.

In other words, it is two lists running out of the same -- there were two different areas, addresses.

Now it is all under one and the two lists for identification purposes are called the Weisberger list and the other list is called the Fisher list, but it is all one company and they carry their vacation credits and whatever credits they had with Weisberger when the combined.

The work is evenly distributed so that one list doesn't get more than the other.

Q. The former employees of Weisberger are now employed by Weisberger Fisher? A. Right, they are working.

Q. Or Fisher Weisberger? A. The second one was when Coventry bought Bader's warehouse in Brooklyn.

There was four men that went up there on the seniority list.

Coventry took over the operation, the Bader Brothers operation.

255 Q. The Bader Brothers warehouse on Atlantic Avenue in Brooklyn? A. Yes.

Q. How many employees were directly in the warehouse in Brooklyn? A. There were four.

Q. What happened to these employees? A. They are working for Coventry which took over. The third one is one that just happened three or four months ago where County Van and Storage took over A.J.R. Davis.

County Van and Storage was a Smythe-Greyhound agent. They took over A.J.R. Davis and moving and storage and they became an Atlas agent.

They took over one or two employees of that.

MR. FRIEDMAN: Off the record.

JUDGE BISGYER: Off the record.

(Discussion off the record.)

JUDGE BISGYER: On the record.

Q. Mr. Martelli, are you familiar with the intended transaction between Bader Brothers and Pan Am of one or two years ago? A. Yes, I am.

Q. When was that? A. In 1974.

256 Q. Were you apprised by Bader Brothers of what it was going to do? A. On a Sunday my partner and I met with Herman Bader and Mike Fazzio from Pan American.

Q. Your partner being Mr. Bracco? A. Yes.

Q. Go ahead. A. And we met in a restaurant at

6 o'clock whereby he was trying to sell the operation to Mike Fazzio.

Mike Fazzio had been in the contract to this local union.

He was trying to buy the operation and let go one portion of it go under and the other portion go non union.

We wanted no part of that and we left.

That negotiations our attorney, Bruce Simon, was in conversation with Mr. Herman Bader's attorney.

While we were negotiating he did receive a phone call and that is as far as I know of what the outcome was or what happened but it never went through.

Q. Mr. Martelli, is it your opinion that is it common practice in the moving and storage industry for employers to sell their trucks, one to the other? A. To what?

Q. For employers to sell their trucks to other employers?

* * * * *

261 what do they read, do you know? A. If you ask my attorney he would know because the agents called Cohen, Weiss & Simon at 3rd Avenue, 607 3rd Avenue.

Q. So you personally have no knowledge of what is on those signs? A. Well, it does say Bader and Golden Cycle and has --

MR. FRIEDMAN: We are not disputing the signs.

JUDGE BISGYER: This might be a good time for a

257 A. In some instances it is.

You have employers – I'm talking about Class A employers when they got the use of a truck they do sell them or if they have a little life left in them or they salvage them to smaller, one truck outfits or two trucks, you know.

They do, may sell them, yes, they do. It is very common.

MR. FRIEDMAN: Your witness.

JUDGE BISGYER: Cross-examination.

CROSS EXAMINATION

Q. (By Mr. Weinrich) Mr. Martelli, with respect to your testimony concerning what you described as a pick up list. A. Pocket list.

Q. Pocket list, you testified that as far as you were aware Bader complied with whatever contract requirement was because Bader did not compy with that contract requirement Local 814 would have pulled the employees out on strike; is that correct? A. I didn't say that.

I said that – well, I said that if he didn't comply with sending up the lists in the agent of the territory would –

Q. Would have pulled the employees out?

stipulation as to what exactly was on the sign unless you, Mr. Friedman, agree with the testimony of the witnesses as to what was on the sign.

MR. FRIEDMAN: If I didn't I would have had testimony about it.

Q. Mr. Martelli, besides the telegrams for which are in evidence as General Counsel Exhibits 5, 6, 7 and 8, and I show them to you, did you communicate the purpose of your picketing to Golden Cycle or to Bader Brothers? A. It was done by Vincent Bracco who is an associate, partner of mine, who was president.

We are two executive officers of this local union and, as I said before, I was attending meetings and I was in and out of the office.

I came in on the 17th. I had a conversation on the 18th with my partner, I called him, who is Vincent

* * * * *

266 one employer; is that correct? A. Yes.

Q. Since the beginning of the picketing at the Syosset facility owned by Bader Brothers and leased to Golden Cycle, have you been present on the scene at all? A. No, I haven't.

Q. Do you know how many people Golden Cycle hired, if any, from the Bader seniority list? A. I was told they have about 12 men, I was told.

Q. Were those people that formerly worked for Bader? A. I heard they may be one only.

Q. Only one? A. That was reported by my business agent, Joe Dametra who I happened to

262 Bracco, president of Local 814, and he got these telegrams out to the respective parties.

JUDGE BISGYER: Before we go any further, off the record.

(Discussion off the record.)

JUDGE BISGYER: Back on the record.

MR. WEINRICH: Your Honor, inadvertently, referring to certain exhibits to Mr. Martelli, I had stated the wrong numbers.

The exhibits that Mr. Martelli was shown and which I meant to refer to were General Counsel Exhibits, 2, 3 and 7 and 8 in evidence.

JUDGE BISGYER: The record will be accordingly corrected.

Do you wish to make a statement of stipulation?

MR. FRIEDMAN: Judge Bisgyer, to follow your sage advice earlier on stipulation on the picket signs, I propose a stipulation that the picket signs said Local 814, IB of T on strike against Golden Cycle Vans of New York Inc. and Bader Brothers, no dispute with any other employer.

JUDGE BISGYER: Is the stipulation agreeable?

MR. WEINRICH: Yes, it is, Your Honor.

JUDGE BISGYER: The record will so indicate.

Proceed with the cross-examination.

speak to two days ago at negotiations in the nightime.

Q. You mentioned three instances in which employees, or in which employers transferred part of their operation to a new employer.

Is it correct that in all three instances both employers involved were employers that had contracts with Local 814? A. Yes.

Q. You were questioned concerning the purpose of the picketing and you stated that one of the union's purposes was to attempt to require Bader
267 to comply with Article 50B of the contract; is that correct? A. 50B which is that he should have notified Golden Cycle that he --

JUDGE BISGYER: That is the clause?

THE WITNESS: That is why he was in violation. A. And you instituted, the union instituted an arbitration proceeding, an arbitration hearing in order to determine whether Article 50B has been violated; is that correct? A. Yes, through the Joint Labor-Management Board.

Q. You negotiated Article 50B into the contract is that correct? A. It was negotiated in 1965.

Q. Was that prior to your becoming the head negotiator? A. That is right, I said 1968.

Q. Were you on the negotiating team at that time? A. I was just elected into office in '65.

Herman Bader was on the negotiating committee in 65 and '62.

Q. You are attempting, the union, to hold Bader liable for damages; is that correct? A. I'm

interested in one thing, that the men to go work for Golden Cycle.

These are 20 year men that worked for Herman Bader and have a right to go to work. That is all
268 I am interested in.

Q. Aren't you also interested in --

MR. FRIEDMAN: The witness hasn't finished his answer.

MR. WEINRICH: I'm sorry, Mr. Friedman.

Q. Finish your answer, Mr. Martelli. A. And I'm interested in that that Golden Cycle go along and the signator to the contract until the expiration of this contract, and then I guess they have remedies to do what they have to do if they don't want to be part of it.

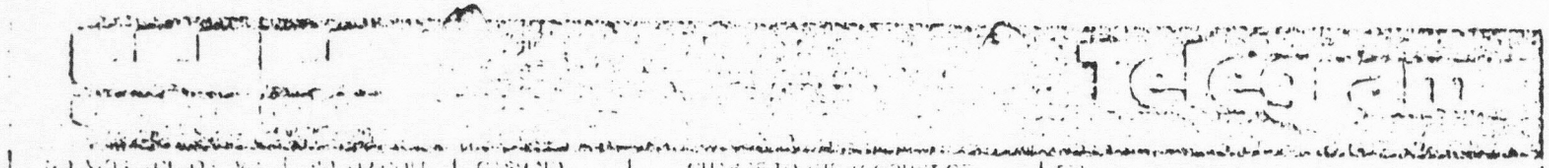
Q. But you are seeking to hold Bader liable for damages; is that correct, because they failed to comply with Article 50B? A. Well, it states in Article 50B that they will be held liable if Golden Cycle doesn't become signator to the contract and take Bader's men and put them to work.

Q. And isn't is correct you seek to hold Bader liable for the wages and fringe benefits that those employees would otherwise make until Golden Cycle agrees to be bound by that agreement? A. Yes, until the expiration of the contract.

Q. There is no set amount of damages, is there? A. I couldn't answer that.

Q. Did you have any conversation with Mr. Bader

* * * * *



NO. WDS.	CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	☐ OVERNIGHT TELEGRAM UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM

Send the following message, subject to the terms on back hereof, which are hereby agreed to

MARCH 20, 1975

TO WILLIAM CROSS, GOLDEN CYCLE VAN OF N.Y., INC.

CAPE CD OR APT. NO.

STREET & NO. 475 UNDERHILL BLVD.

TELEPHONE

CITY & STATE SYOSSETT, N.Y. 11791

ZIP CODE

WE UNDERSTAND YOU ARE PURCHASING AND TAKING OVER THE OPERATION OF BADER BROS., INC. THIS UNION HAS A COLLECTIVE BARGAINING AGREEMENT WITH BADER BROS., INC. COVERING THE OPERATION YOU ARE PURCHASING AND TAKING OVER.

PURSUANT TO ARTICLE 50 OF SAID AGREEMENT ENTITLED, PARTIES BOUND, WE DEMAND THAT YOU AGREE IN WRITING TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT. PLEASE NOTIFY THE UNDERSIGNED PROMPTLY IN WRITING THAT YOU ASSUME THE OBLIGATIONS OF SAID AGREEMENT. YOUR FAILURE TO DO SO WILL COMPEL THE UNION TO TAKE WHATEVER LAWFUL ACTION IS NECESSARY TO PROTECT OUR MEMBERS AND THE INTEGRITY OF OUR CONTRACT.

(SIGNED) VINCENT BRACCO, PRESIDENT
LOCAL 814, I.B.T.

SENDER'S TEL. NO.

NAME & ADDRESS

WU 1207 (R 5-63)

GENERAL COUNSEL'S EXHIBIT 2

123(a)

BEST COPY AVAILABLE

GENERAL COUNSEL'S EXHIBIT 3

Western Union Telegram

MEA005(0137)(1-000478A030)PD 03/21/75 0135
ICS IPMABYB ALB
02072 ICS IPMDCNB NYK 1-042299A079 03-20 1917
PMS
02073 FR DC NEW YORK NY 99 03-20 0623P EDT
WILLIAM CROSS, GOLDEN CYCLE VAN OF NY INC
475 UNDERHILL BLVD
SYOSSET NY 11791

921-6600

GSL

5587

WE UNDERSTAND YOU ARE PURCHASING AND TAKING OVER THE OPERATION OF BADER BROS INC THIS UNION HAS A COLLECTIVE BARGAINING AGREEMENT WITH BADER BROS INC COVERING THE OPERATION YOU ARE PURCHASING AND TAKING OVER
PURSUANT TO ARTICLE 50 OF SAID AGREEMENT ENTITLED PARTIES BOUND WE DEMAND THAT YOU AGREE IN WRITING TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT PLEASE NOTIFY THE UNDERSIGNED PROMPTLY IN WRITING

SF-1201 (R5-69)

Western Union Telegram

THAT YOU ASSUME THE OBLIGATIONS OF SAID AGREEMENT YOUR FAILURE TO DO SO WILL COMPEL THE UNION TO TAKE WHATEVER LAWFUL ACTION IS NECESSARY TO PROTECT OUR MEMBERS AND THE INTEGRITY OF OUR CONTRACT

(SIGNED) VINCENT BRACCO PRESIDENT
LOCAL 814 I.B.T.
NNNN

Collective Bargaining Agreement of the Moving and Storage Industry of New York

AGREEMENT made as of this 1st day of April, 1974 by and between LOCAL 814, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, hereinafter referred to as "UNION" and the MOVERS AND WAREHOUSEMEN'S ASSOCIATION OF GREATER NEW YORK, INC., AND the UPPER NEW YORK WAREHOUSEMEN'S ASSOCIATION, INC., CITY MOVERS ASSOCIATION, INC., MOVERS ASSOCIATION OF THE BRONX and WEST SIDE INC., AFFILIATED MOVING VAN OWNERS, INC., and those undersigned employers not members of any of said Employer Associations.

WITNESSETH:

WHEREAS, the Collective Bargaining Agreement between the parties hereto dated April 1, 1971 has expired by its terms on March 31, 1974 and

WHEREAS, the parties have met and agreed upon the terms and conditions of a new Agreement to be effective as of the 1st day of April, 1974, until March 31, 1977,

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto hereby agree as follows:

DEFINITIONS

A. "Employer" means any person, firm, corporation, trustee, receiver or organization in the Industry who is a party to this agreement either as a member of one of the Associations or as a non-Association Employer.

B. "INDUSTRY" means those Employers performing the following services:

1. Moving and Storage Work
2. Commercial Work
3. New Distribution Work
4. Exhibition Work
5. Long Distance Moving
6. Miscellaneous.

C. "Moving and Storage Work" means:

1. "Household Moving" - All services involved in the packing, crating, handling, loading, unloading, movement and storage of all personal effects and personal property to or from a location used or to be used primarily as a personal residence, and works of art to and from galleries, museums or other places of show, or Employer's warehouse, except:

(a) where to or from a location recognized as being a location at which Exhibition Work rate of pay is applicable, or

(b) in connection with a commercial move, or

(c) in connection with New Distribution Work.

2. "Storage" – all goods, equipment or merchandise coming into or out of an Employer's

600 cubic feet or more except in cases where there are unusual conditions, in which case the chauffeur shall determine when additional help is required.

O. (1) Safe and adequate transportation shall be furnished all employees to and from jobs.

(2) No chauffeur shall be required to operate a vehicle not in safe condition.

P. (1) Prior to the hiring on a regular, daily, or any other basis by an Employer of any employee not on the Seniority List, the Union shall be notified and given the opportunity to refer applicants on a nondiscriminatory basis. Such applicants shall be interviewed and given fair consideration by the Employer.

(2) The notification required above shall be given as soon as the Employer reasonably has knowledge that hiring of employees not on the Seniority List will be required.

(3) In the event that time does not permit adequate notice be given to the Union to refer applicants, the Employer may fulfill its work crew requirements without such notice. It is agreed that these should be rare occurrences, and a written report shall be submitted to the Union with regard to each such instance, documenting the reasons for the departure from the notification requirement. In the event this paragraph is abused, this right shall be revoked.

(4) Whenever an Employer hires an employee not on his Seniority List, the Employer shall immediately notify the Union of the employee's name, address, social security number and ledger number, if any. Except for employees continuously employed, after the initial notice the

Employer shall notify the Union each time the employee is rehired.

(5) It is the general intent of this Agreement that available work in the Industry should be distributed as equitably as possible among employees in the industry-wide collective bargaining unit, after the Seniority List of the Employer is exhausted. It is recognized that some Employers have traditionally maintained lists of persons not on their Seniority List as more or less regular "shapers" for employment after their Seniority List is exhausted. Each such Employer shall have the option of registering such list with the Union by May 31, 1974, sixty (60) days after contract signing. If registered, the Employer may hire an employee from such list without the advance notice required by this Paragraph P, except that the notice required in part (4) of this Paragraph shall still be given. In the event that, as a result of analysis of reports submitted, the Union determines that continued use of any such list or portions thereof is substantially inconsistent with the purpose of this Paragraph P, the Union shall have the right to require the discontinuance or modification of the list, subject to Joint Board or OIC arbitration.

Q. Only a Union Delegate, Shop Steward or employee of the Impartial Chairman's Office may make a check of Union Books.

R. (1) Whenever an employee agrees to use his own car for the purpose of transporting himself and/or others to a job, the Employer shall pay 18c per mile plus tolls, with a minimum of $5.00 or other such compensation mutually agreed upon between the employee and the Employer. Em-

situations there is a basis for a different starting time for the sending and receiving ends of a commercial job, this shall not be abused.

L. The chauffeur of vans waiting to be loaded or unloaded shall assist other chauffeurs in the truck in the loading or unloading of other vehicles.

13. UNION SECURITY

A. All present employees who are members of the Union on the effective date of this article or on the date of execution of this agreement, whichever is the later, shall remain members of the local Union in good standing as a condition of employment. All present employees who are not members of the local Union and all employees who are hired hereafter shall become and remain members in good standing of the Union as a condition of employment, on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this Agreement or on and after the 31st day following the execution of this Agreement, whichever is the later.

B. The Employer shall notify the Union in writing of the name and address of every new employee on the thirty-first day of employment. This is in addition to notification required on the date of initial hire.

C. The failure of any person to become a member of the Union at the required time shall obligate the Employer, upon written notice from the Union to such effect and to the further effect that Union membership was available to such

person on the same terms and conditions generally available to other members, to forthwith discharge such person. Further, the failure of any person to maintain his Union membership in good standing as required herein shall, upon written notice to the Employer by the Union to such effect, obligate the Employer to discharge such person.

D. In the event of any change in the law during the term of this Agreement the Employer agrees that the Union will be entitled to receive the maximum Union security which may be lawfully permissible.

14. PROTECTION OF RIGHTS

A. It shall not be a violation of this agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line including the primary picket line of the Union party to this Agreement, and including primary picket lines at the Employer's place of business.

B. This provision is not intended to cover the situation involving a tenant of a warehouse or of a location to which a delivery is to be made if not the customer of the Employer.

15. MAINTENANCE OF JURISDICTION

A. (1) It is understood and agreed that the Employer party to this Agreement shall in no way, either directly or indirectly, participate or take

matter by mutual agreement. The employees shall remain at the location until the matter is resolved. If no agreement can be reached then the employees involved shall return the disputed work to the employer's terminal until said matter is resolved.

(4) Such action by the Union and the employees shall not constitute a violation of this Agreement.

C. The recognition on the part of the parties hereto, to apply for and utilize Building Trades cards for the purpose of assuring Union work and identification of those employees on any job on which the Trades are working, shall be maintained. However, in the event the Building Trades should refuse in the future to issue such identification cards, then in that event it is clearly understood that the work involved shall continue to be Teamster's jurisdiction and no assignment of such or re-assignment of such work can be made to any other party, and shall be returned to the terminal by the employees. Nothing contained in any agreement to the contrary shall have any effect on this Agreement.

D. To the maximum extent permissable legally, and practically, Local 814 will make every effort to secure the cooperation of other labor organizations to protect the proper jurisdiction of Local 814.

16. CHECK-OFF

Check-Off. Employers shall each month deduct from the wages of employees covered by

this Agreement such sums as may be certified by the Union to be due from such employees for dues, initiation and/or uniform assessments of the Union and agree to remit to the Union all such deductions prior to the end of the month for which the deduction is made, together with a list of the employees and the amounts deducted from each employee provided the Employer is furnished with authorization for such check-off signed by the employee. Where an employee who is on check-off is not on the payroll during the week in which the deduction is to be made or has no earnings or insufficient earnings during the week or is on leave of absence, the employee must make arrangements with the local Union to pay such dues before the end of the month.

17. SHOP STEWARDS

A. The Employer recognizes the right of the Union to appoint and remove Shop Stewards. The Union shall appoint a Shop Steward from the Employer's Seniority List. If there is evidence that no man from the existing list is qualified to fulfill the duties of a Shop Steward the Union may appoint a Shop Steward from other than the Employee's List.

B. The authority of a Shop Steward shall be limited and shall not exceed the following duties and activities:

1. The investigation and presentation of grievances in accordance with the provisions of the Collective Bargaining Agreement;

2. The transmission of such messages and information which shall originate with, and are

20. PIANOS AND ELECTRICAL APPLIANCES

A. When pianos or electrical appliances are moved separately within the Metropolitan District and not as part of a regular moving, packing, shipping or storage job, the wages of the respective craft shall prevail, but this shall not apply to a piano or electrical appliance being moved in or out of storage by the warehouseman storing same.

B. Employers who are regularly engaged in the business of transporting pianos or electrical appliances shall sign the respective contracts of these units of the Union now in effect.

21. SENIORITY

Seniority shall prevail as follows:

A. An up-to-date Seniority List shall be posted quarterly on the Bulletin Board at each Employer's place of business within 30 days after execution of this Agreement. A copy shall be furnished to the Shop Steward; another copy shall be mailed to the Union's office. The list shall show each employee's date of original hire, and his classification seniority date. The list shall be kept up-to-date.

B. Any claim for correction must be made to the Union in writing within ten (10) days after the posting of the list. The Union may process such claim through the grievance machinery. Failure to claim correction within such ten-day period shall foreclose any later claims for correction.

C. (1) An employee shall be entitled to a position on the Seniority List after completion of 30 working days in any 90-day period. Prior to the completion of such 30 working days, the employee may be laid off without recourse. The Employer may not arbitrarily and repeatedly break an employee's time for the purposes of preventing such employee from qualifying for the List. After completion of such 30 working days, an employee shall be classified according to the classification in which he worked the major part of his qualifying period.

2. The Joint Labor Management Board shall review the operation of the foregoing paragraph during the months of June, July and August with the power to amend the provisions or said paragraph if the Board finds that amendment would aid employees permanently attached to the Industry in having a fair opportunity to acquire job security.

D. (1) Overtime commercial work shall be assigned first to employees on the Seniority List without regard to classification, if they are available. Employees failing to report for the regular work day shall not be considered available for commercial overtime that day. This paragraph shall not be applied to replace an employee who had been employed on commercial work during straight time hours which continued into overtime.

(2) All other work available shall be assigned first to employees by classification in seniority order.

(3) However employees with required special qualifications for a particular job may be assigned

out of seniority order but in their own seniority order. Abuses of this paragraph shall be brought to the attention of the Shop Steward and the Employer.

E. The position of employees on the Seniority List by classification shall determine the order of lay-off by reason of lack of work and re-hire.

F. (1) When the employee is offered a work opportunity and there is no work available in the employee's classification that day, and such employee is offered the opportunity to work in a different classification and he accepts the assignment, he shall receive the wages of the classification to which he is assigned that day, provided that such employee may, without fear of discrimination, refuse the assignment of work out of his classification.

(2) An employee in his classification seniority order may perform other classifications of work for which he may be qualified to work to complete his day's work or the particular job on which he is working, provided that this shall not permit the abuse of by-passing employees on the classification seniority list. Abuses shall be brought to the attention of the Shop Steward and the Employer.

(3) When an employee works out of his classification, he shall receive the rate of pay for the classification in which he is working, or his seniority classification, whichever is higher, except that this shall not apply to an employee who accepts work out of his classification in accordance with paragraph F(1) above.

G. When an employee has proved a claim that he has been improperly by-passed, he shall receive pay for all time lost at whatever rate would have been applicable if he had not been by-passed.

H. Whenever one company is absorbed by, merged with, purchased or acquired in any manner by another company, the employees of both companies shall be integrated into one Seniority List by their dates of original employment. This shall be so even if there be more than one payroll or both companies retain their corporate structure, or are owned and operated as separate entities. The determining factor shall be common stockholders, directors or officers or common ownership. This shall, likewise, apply to all companies heretofore merged, absorbed, purchased or acquired and such companies now maintaining separate Seniority Lists or payrolls shall, within ten (10) days after the execution of this agreement, integrate their Seniority Lists to accomplish the foregoing purposes. Any attempt to evade this purpose shall leave the Union free to withdraw its members from the employ of the company or companies practicing such evasion until this section is complied with. The parties recognize, however, that in the case of warehouses widely separated, or having different-type operations, hardships may be suffered or difficulties presented making administration of one Seniority List impractical. In such cases the Union shall meet with such companies separately to provide means of surmounting such difficulties to eliminate hardship.

I. The establishment of a Seniority List by classification shall in no way interfere with the right of the Employer to discharge an employee pursuant to Article 10V.

J. Seniority shall be deemed broken:

1. When an employee resigns:

2. When the employee is discharged for just cause.

3. When an employee is absent five (5) working days without reporting cause of absence to the Employer.

4. When an employee fails to report for work within five (5) working days after notice to him by the Employer to report or said employee fails to keep in communication with Employer to determine if work is available.

5. When an employee has been on lay-off for more than twelve (12) months.

K. (1) When an employee is requested by an Employer to transfer from one classification on a Seniority List to another, he shall have a period of thirty(30) days within which to exercise his option either to retain his position in his original classification or to accept the position to which he is to be transferred. At the end of such thirty (30) day period he must elect to accept a position at the bottom of the List of the new classification to which he is transferred or to retain his original position on the List, in his original classification. In the event, however, a chauffeur loses his license because of violation of any laws in the course of employment, or because of a change in his physical condition, such chauffeur may at his request, be transferred to another classification on the Seniority List provided he is qualified to

perform the work of such classification, retaining his position thereon in accordance with his original date of hiring.

(2) Any other employee on the Employer's Seniority List for five or more years, because of a change in his physical conditon, at his request may be transferred to another classification on the Seniority List provided he is qualified to perform the work of such classification, retaining his position thereon in accordance with his original date of hire.

L. No Employer shall require as a condition of continued employment that an employee purchase a truck, tractor and or tractor and trailer, or other equipment, or that any employee purchase or assume any proprietary interests or any other obligations of the Employer.

M. An employee shall be entitled to a leave of absence without pay and retain his position on the Seniority List as follows:

1. Upon election to Union office or upon employment by the Union as a Special Representative or Organizer; such employee, however, shall give notice in writing within thirty (30) days after termination of office or employment for the Union of his availability for work.

2. For illness or disability as a result of compensable accident for a period of one (1) year, with a review of the circumstances at the end of such year.

3. For other valid and urgent reasons approved by the Union and the Employer, the period of which shall be fixed by Agreement between the parties in writing.

N. It is recognized by the parties that all available work should be performed by employees covered by this Agreement, who look to the Moving and Storage Industry for their prime source of employment. It is likewise recognized, however, that when such employees are unavailable it may become necessary to hire civil service or other employees, whose employment is secondary to their main occupation. In the event such civil service or other employees whose employment is secondary to their main occupation are employed, they shall not be entitled to the benefits of this Seniority Article, unless they terminate their primary employment and agree to look to the Moving and Storage Industry as their prime source of employment.

22. FAIR EMPLOYMENT PRACTICES

The Employer and the Union agree not to discriminate against any individual with respect to his hiring, conpensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

23. DEATH IN FAMILY

A. In the event of a death in the immediate family of an employee on a Seniority List for at least one year (spouse, parents, children, brothers, sisters, grand parents, or parents-in-law), such employee shall be paid for the time lost including

sary to ascertain whether the provisions of this Article 24 are being adhered to, and whether any depletion pursuant to Paragraph D. hereof has occurred.

(2) Said documents shall be available to the Union for inspection and review.

(3) In addition, the Shop Steward and/or union representative shall have access to the information at the Employer's place of business, upon reasonable request.

(4) The information referred to in this paragraph shall be kept confidential, and shall not be used in any manner or for any purpose forbidden by law.

F. In the event there is any jurisdictional dispute involving this Article with any other Teamster Local, it shall be submitted by the Union for determination in accordance with machinery established under the International Brotherhood Of Teamsters Constitution, and the result shall be binding on all parties. During the pendency of any such proceeding, there shall be no strike or lockout.

25. CONTRACT EMPLOYEES

A. (1) All persons performing long distance driving under contract to an Employer covered by this agreement (whether as "owner-operator," "owner-driver," "percentage driver," "commission driver," "contract driver," or otherwise) shall be covered by this Agreement as employees (hereinafter referred to as contract employees).

(2) Contract employees shall be covered by this contract limited to those provisions set forth in this Article and including the Union Security,

Pension and Welfare provisions, Legal Separability, No Strike, Grievance and Arbitration clauses and Union Check-Off.

(3) The Employer shall make appropriate provision for contract employees as employees under Social Security, Workmen's Compensation and Unemployment Insurance benefits.

(4) The Employer specifically reserves the right, consistant with its agency van line agreement, to control the manner and means and details of, and by which contract employees perform services as well as the ends to be accomplished. All other details and economic arrangements shall be the subject of a contract between the owner of the vehicle and the Employer party to this Agreement provided that they shall not conflict with the provisions of this Article 25.

(5) Contract employees shall be compensated under a "Separate Check" system, and other compensation and benefits under this agreement shall be separately compensated.

(6) This agreement shall not be used to deplete the number of regular long distance drivers (other than contract employees) presently employed by Employers covered by this Agreement.

(7) The Employers shall in the assignment of work opportunities to contract employees adhere to, as far as is practical in the efficient operation of the Employer's business, assign work and attempt to equally distribute earning opportunities in a manner consistent with said employees' qualifications, length of service with the Employer, earning opportunities of said employees, equipment capabilities and agency van line agreement. (First in, first out dispatch shall not be considered a violation of the equal earning opportunity.)

(8) The foregoing agreement with respect to contract employees shall automatically be renewed upon the expiration of this Agreement and renewals thereafter, and shall be reopened only upon the conclusion of a national agreement with the major van lines covering contract employees on a national basis.

B. All loading and unloading of trucks operated by contract employees covered by this Agreement, within Metropolitan District, shall be performed by employees of the Employer. These employees shall be from the Employer's Seniority List if available. Employees laid off shall be deemed available, and shall be recalled by the Employer in seniority order.

26. NEW DISTRIBUTION WORK

A. Any employer performing New Distribution Work shall pay wages for such work as set forth in the Appendices attached hereto.

B. The union agrees to include the name and address and telephone number of Employers who perform New Distribution Work on lists to be issued periodically by the Union to the building and construction companies and other companies or firms about to construct new buildings or major alterations.

C. Only employees of Employers performing New Distribution Work shall unload trucks making deliveries, whether out-of-town trucks operated by Union drivers, commodities delivered by their own

lieu of clock time.

J. On New Distribution Work during the day Monday through Friday between the hours of 8:00 A.M. and 5:00 P.M. men shall be employed by seniority in order of their classification. After 5:00 P.M. and on Saturday, Sunday and holidays men shall be employed by payroll seniority.

27. EXHIBITION WORK

Any employer subject to this agreement performing exhibition work may do so only upon the execution of the Union's Exhibition Agreement.

28. WELFARE FUND

A. (1) Each Employer shall pay weekly into Teamster Local 814 Welfare Fund hereinafter referred to as Welfare Fund the sum of $14.00 per week for each week in which a regular employee is employed, Monday through Friday, and each such Employer shall pay weekly into the Welfare Fund the sum of 35c per hour for each hour worked, including overtime, Saturdays, Sundays, holidays and vacation periods, by part-time employees.

(2) Effective April 1, 1975 the rate of contribution for regular employees shall be increased to $15.60 per week and for other employees to 39c per hour.

(3) Effective April 1, 1976 the rate of contribution for regular employees shall be increased to $17.20 per week and for other employees to 43c per hour.

B. There shall be purchased or provided out of

said Fund such benefits, including disability benefits, for each employee whether a member of the Union or not, and his dependents as determined by the Board of Trustees. The Board of Trustees are hereby empowered and authorized to make such rules and regulations governing the conduct and operation of said Welfare Fund as they shall deem proper, including the power to establish the amounts, form and method of contribution to be paid by Employers party to this Agreement, as the Board deems necessary to keep said Welfare Fund solvent and to maintain said Welfare Fund on a sound actuarial basis.

C. Seniority employees who are absent by reason of illness or occupational accident shall be contributed for by their Employers for a period of six weeks if employed less than one year, 12 weeks if employed more than one year but less than five years, and 15 weeks if employed more than five years.

29. PENSION FUND

A. (1) Each Employer shall pay weekly into the Teamster Local 814 Pension Fund, hereinafter referred to as Pension Fund, the sum of $25.00 per week for each week in which a regular employee is employed and each such Employer shall pay weekly into the Pension Fund the sum of 62½c per hour for each hour worked, including overtime, Saturdays, Sundays, holidays and vacation periods, by part-time employees.

(2) Effective April 1, 1976 the rate of contribution for the regular employee shall be increased to $28.20 per week and for other

employees to 70½c per hour.

B. The Board of Trustees is hereby empowered and authorized to make such rules and regulations governing the conduct and operation of the said PENSION FUND as it shall deem proper in accordance with the AGREEMENT AND DECLARATION OF TRUST, of said PENSION FUND. A copy of the AGREEMENT AND DECLARATION OF TRUST hereinabove described shall be furnished to each Employer party to this Agreement.

30. WELFARE AND PENSION CREDITS

A. Regardless of the amount of contributions paid, all employees shall receive credit towards Welfare and Pension benefits for all hours worked, including overtime, Saturdays, Sundays, and holidays.

B. Any employees employed 72 hours in a month shall be eligible for full Welfare benefits, provided that the Trustees of the Fund, after actuarial advice, may adopt a quarterly basis.

C. Contributions to the Welfare and Pension Funds shall not be required during the first thirty (30) days of employment in the industry of full-time civil service employees, or of full-time students during the school vacation period. For purposes of this Paragraph C, "the first thirty (30) days of employment" means:

1. During the months of June to September inclusive, the first thirty days of work in the industry or ninety consecutive calendar days with-

in these months, regardless of the number of days actually worked, commencing with the date of first employment, whichever comes first.

2. During the other months of the year, the thirty calendar days commencing with the day of first employment.

3. In those instances in which "the first thirty days of employment" as herein defined begin prior to June and extend into the June-September period or begin in the June-September period and extend beyond September, so that differing views are possible as to the period of exemption from contributions, the more restrictive reading which will result in the shorter period of exemption from contributions shall be applied.

D. Paragraph C above is not to be applied unless the status of the affected employees as full-time civil service employees or full-time bona fide students shall be attested to by a certificate of the appropriate government department or of the school duly filed prior to the end of the reporting period with the payroll records of the contributing Employer. Such employees shall be listed on remittance forms regularly filed with the Fund Office by the contributing Employer. Contributions shall be paid on all other employees from the first day of employment.

E. (1) Employers shall report to the Welfare and Pension Funds all hours worked by all employees in order to enable such employees to obtain full credit for Welfare and Pension purposes.

(2) Each Employer will supply the Shop Steward with two copies of the monthly Pension,

Welfare and Annuity report. The Shop Steward will post one copy on the bulletin board and present the other copy to the Union.

F. In the event the Employer fails to pay contributions due to the Welfare, Pension, or Annuity Fund, or any one of them, in accordance with the rules and regulations of the Trustees of the Fund, the Union shall give 3 days' notice in writing excluding Saturdays, Sundays and holidays to the Employer of such failure to pay. If payment is not made within 3 days excluding Saturdays, Sundays and holidays, the Union shall have the right to take strike action as well as such other action it deems necessary. Any such action taken by the Union will not be considered a violation of this agreement and the Employer shall be responsible to the employees, the Union and the Welfare, Pension and Annuity Funds for any losses resulting therefrom, including but not limited to wages lost.

G. For any Employer determined by the Trustees to be a chronic delinquent, the following shall prevail:

1. The Employer must thereafter include in all contracts with its customers, and on all bills and statements submitted to its customers, this notice:

NOTICE

Payment for services under this contract shall be paid as follows:

(a) A check payable to the order of the

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B. All disputes, grievances and controversies between the parties, of any nature whatsoever, whether related specifically to the provision of this Agreement or not, including but not limited to claims for violation of the Antitrust Laws of the United States or any state, or claims for violation of the Labor Laws of the U.S. or any state (including Sec. 303 of the LMRA), which cannot be adjusted by the representatives of the Employers and the Union, shall be submitted to the Joint Board and if deadlocked, to Arbitration before the Impartial Chairman as may be appropriate. The Joint Board and if deadlocked, the Impartial Chairman shall be the exclusive forum for the determination of all such matters.

C. During such time as any such matter is pending there shall be no strike or lockout. Decison of the Joint Board or Impartial Chairman shall be final and binding. No more than two (2) weeks shall be consumed in submitting any controversy to the Joint Board, *which shall make its decision within one (1) week thereafter.

D. A complaint by an Employer against an employee or vice versa must be filed by the aggrieved party with the Association or with the Union or with the Joint Board by a non-Association Employer as the case may be, within a reasonable time after the act complained of, not to exceed two (2) weeks. Upon receipt of such complaint and decision to process the matter, it shall be the duty of the Association or the Union, as the case may be, to notify the other party immediatley of such complaint. When the Joint Board has been notified of a complaint it shall

3 cents per hour for all hours for which pension and welfare contributions are required, with a maximum of 40 hours per week.
1½% of overtime commercial revenue;
1% of straight time commercial revenue.

B. The Impartial Chairman shall establish and administer the budget for his office in his sole discretion. He shall issue an annual report to the Union and the Associations, setting forth his operations in detail, together with an annual financial report by a C.P.A. This report shall be rendered for each calendar year by February 15 of the succeeding year.

46. INDUSTRY PROMOTION FUND

The Employer shall contribute two cents per hour for each hour for which pension and welfare contributions are paid to the Impartial Chairman for the purpose of administering an Industry Promotion Fund, which to the maximum extent permitted by law, will be utilized to promote the industry and the services provided to the public, and provide related services in connection with consumer relations, advertising, public relations. The administration of this Fund shall be entirely separate from the other function of the Impartial Chairman's office, and shall be separately reported and audited pursuant to Paragraph B of Article 45 above.

47. COLLECTIVE BARGAINING UNIT

The employees covered by this collective bargaining agreement shall constitute a single industry-wide collective bargaining unit. This

Agreement has resulted from joint collective bargaining negotiations between the Union and all Employers party hereto. Accordingly, all Employers acknowledge that they are part of a multi-employer collective bargaining unit which is comprised of the Associations and their members, and such other individual Employers which have or may singly become parties to this Agreement.

48. CONTRACT REOPENING

A. If the Union makes any agreement with any other Employer or group of Employers engaged in the Industry upon terms different from the terms contained in this Agreement, this Agreement may at the option of the Associations acting unanimously be reopened upon 30 days' notice in writing to the union.

B. To the maximum extent permitted by law, the Union will take all steps necessary to preserve and protect the uniform standards and conditions of employment set forth in this Industry Agreement, for the sole purpose of preserving the job security and standards of employment for all employees in the industry-wide collective bargaining unit.

49. LEGALITY

A. If the courts or government agencies should decide that any clause of this Agreement is illegal, it shall not invalidate the other clauses or sections of the Agreement.

B. The violation of the Agreement by any

Association signatory hereto shall not constitute a violation by the other Associations signatory hereto.

50. PARTIES BOUND

A. This Agreement shall be binding upon the Union and such Employers who are either certified by the Associations parties hereto as members of such Associations, who have agreed to be bound by the terms of this Agreement, or individual Employers who executed an individual agreement binding themselves to the terms of this Agreement.

B. This Agreement shall also be binding upon the successors, administrators, executors and assigns of the parties either signatory hereto, or who are by membership in an Association as above set forth bound to the terms hereof. In the event an entire operation or part thereof, is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceeding, such operation or part of an operation shall continue to be subject to the terms and conditions of this Agreement during the term hereof. On the sale, transfer or lease the specific provisions of this Agreement shall prevail. It is understood that the parties hereto shall not use any leasing device to a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc. of the operation covered by this Agreement, or any part thereof. Such notice shall be in writing and a copy served upon the Union at the time the seller, transferor or

lessor executes a contract or transaction as herein described. The union shall also be advised of the exact nature of the transaction excluding financial details. In the event the Employer fails to require the purchaser, transferee or lessee to assume the obligations of this Agreement, the Employer shall be liable to the Union, and to the employees covered, for all damages sustained as a result of such failure to require assumption of the terms of this Agreement; but shall not be liable after the purchaser, transferee or lessee has agreed in writing to assume the obligation of this Agreement.

51. ACQUISITION AND UNION JURISDICTION

A. (1) If an Employer covered by this Agreement (or any owner or principal) has or hereafter acquires (whether by purchase, merger or otherwise) a controlling interest (whether ownership, stock, equitable or managerial) in any other moving and storage business within the jurisdiction of Local 814 or Local 445, this Agreement shall cover such operation and the employees shall be considered an accretion to the collective bargaining unit covered by the applicable local.

(2) Jurisdiction shall mean the following geographical territory: New York City, Nassau and Suffolk Counties, Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties.

B. If an Employer covered by this Agreement (or any owner or principal) has or hereafter acquires (whether by purchase, merger or otherwise) a controlling interest (ownership, stock, equitable or managerial) in any other moving and storage business outside the jurisdiction of Local

814 or Local 445:

1. such business may not be used to evade any of the Employer's obligations under this agreement including but not limited to the obligations relating to contract employees nor to deplete the existing work opportunities of employees covered by this Agreement.

2. If there is a conflict between the existing work opportunity expectations of the employees covered by this Agreement and the employees of the acquired company, the Union and the Employer shall attempt to agree upon a fair and equitable balance of these interests. If they fail to agree, the matter shall be submitted directly to binding arbitration before the Impartial Chairman. Pending arbitration, there shall be no strike.

3. Any contract employees for such business loading or unloading within the Metropolitan District as defined by this Agreement must be assigned and must utilize only employees covered by this Agreement, if available. Employees laid off shall be deemed available and shall be recalled by the Employer in seniority order.

C. Each Employer covered by this Agreement shall furnish the Union with a list of all contract employees performing work for them wherever said contract employees may have been domiciled, and said contract employee shall be covered by Article 25 hereof. In addition, each Employer covered by this Agreement will keep said list up-to-date continuously, informing the Union immediately as to any additions to or deletions from the list of covered Contract employees.

D. The Employer will not devise or put into operation any scheme whether herein enumerated or not, to defeat the terms of this provision.

52. TERM OF AGREEMENT

This Agreement and all of its terms and conditions shall be effective commencing April 1, 1974 and shall continue in full force and effect until March 31, 1977 subject to Article 25(8).

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first written above.

Local 814, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By Vincent Bracco, as President

By Charles Martelli, as Secretary-Treasurer

MOVERS AND WAREHOUSEMEN'S ASSOCIATION OF GREATER NEW YORK, INC.

By Stanley Cirker, as President

UPPER NEW YORK WAREHOUSEMEN'S ASSOCIATION, INC.

By Tony DeSimone, as President

CITY MOVERS ASSOCIATION, INC

By Robert Smolen, as President

MOVERS ASSOCIATION OF THE BRONX AND WEST SIDE, INC.

By Joseph Cavaluzzi, as President

AFFILIATED MOVING VAN OWNERS, INC. and others

By Michael DiBattista, as President

Local 814 Wage Scale Committee:

Richard Bausano, Jack Celli, Robert Corbett, George Denaris, Mario Lagasi, Leo Marasa, Frank O'Day.

MEMBERSHIP RATIFIED:

March 31, 1974

GENERAL COUNSEL'S EXHIBIT NO. 5

AGREEMENT

THIS AGREEMENT made this 1st day of September, 1974, by and between BUSHWICK TRAILERS, INC., BADER BROS. VAN LINES, INC. and BADER BROS. WAREHOUSES, INC., all corporations organized under the laws of the State of New York, hereinafter referred to collectively as the "Sellers", and GREYHOUND VAN LINES, INC., an Indiana corporation, having its principal offices at P. O. Box 3020, Bellevue, Washington, hereinafter referred to as the "Buyer."

WHEREAS, the Sellers own certain assets and real property located in the State of New York and are willing to sell and transfer certain of such assets to Buyer and lease certain of such real property to Buyer subject to the terms and conditions hereinafter set forth; and

WHEREAS, Buyer desires to purchase and acquire certain of such assets exclusive of good will and operating authorities from any governmental body and lease certain of such real property under the terms and conditions hereinafter set forth:

For the mutual covenants and considerations herein contained and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed:

1. Sale of Assets. Sellers hereby agree to sell and Buyer hereby agrees to purchase all of the rolling stock and other equipment listed on Exhibit "A" attached hereto and made a part hereof and hereinafter referred to collectively as the "Assets." The Assets do not include any good will, trade names, customer lists or other intangible assets owned by the Sellers, nor do the Assets include any other real or personal property owned by the Sellers.

2. Purchase Price. For the assets sold pursuant to paragraph "1" herein Buyer shall pay Sellers an aggregate purchase price of

under the terms and conditions set forth in this paragraph "2".

(a) shall be paid as follows:

(i) shall be paid in cash or Cashier's check at closing; and

(ii) shall be paid on the 1st day of September in each of the years 1975, 1976, 1977, and 1978.

With respect to the preceding indebtedness interest shall accrue at nine (9%) percent with respect to the declining unpaid balance of the indebtedness and shall be payable upon the dates indicated above. The unpaid purchase price may be prepaid in whole or in part without penalty at any time after December 31, 1974. Sellers shall have the right to require full payment of the above indebtedness no later than September 1, 1977 in the event the prime rate of interest as reported by the Federal Reserve Board drops to eight (8%) percent or less.

(b) With respect to Buyer shall make payments to Seller of and per quarter beginning on October 20, 1974 of principal plus interest with respect to the unpaid portion of said amount at the prime rate as set forth above plus one (1%) percent until all of said indebtedness is paid.

(c) With respect to Buyer shall pay to Sellers per quarter beginning on October 20, 1974, of principal plus interest at the prime rate as defined above plus two (2%) until the full amount of such indebtedness is paid.

(d) With respect to Buyer shall pay to Sellers per month beginning on September 6, 1974, of principal

plus interest at the prime rate as defined above, plus one and three-fourths (1-3/4%) percent until the full amount of said indebtedness is paid.

All payments of the purchase price provided for in (a) hereof shall be delivered to the account of the Sellers in Hialeah-Miami Springs First State Bank, or such other bank or such other place as the Sellers may by written notice give to Buyer.

All payments of the purchase price provided for in (b) (c) and (d) hereof shall be delivered to the account of the Sellers in Franklin National Bank, Robbins Lane and Jericho Turnpike, Jericho, New York 11753.

All adjustments shall be pro-rated as of date of closing.

3. Warranties and Agreements of Buyer.

A. The Buyer warrants and represents that it has the full right and power to enter into this Agreement and to consummate the transactions provided for herein.

B. The payment and collection and performance of this Agreement, shall be guaranteed by The Golden Cycle Corporation, a West Virginia corporation, whose address is 102 North Cascade Avenue, Colorado Springs, Colorado, which corporation owns all of the issued and outstanding stock of the Buyer. The Golden Cycle Corporation shall execute a Guaranty Agreement in form identical to Exhibit "B" attached hereto and made a part hereof.

4. Warranties of the Seller.

A. The Seller warrants that it has clear title to all the assets intended to be conveyed by this Agreement, that it knows of no legal restriction or state of facts which would prevent it from selling and delivering such assets. Seller agrees to indemnify and hold Buyer harmless in all respects.

B. Seller warrants and represents that the execution of this Agreement and the consummation of the transactions described herein do not violate the terms of any of its Articles of Incorporation or By-Laws and that the

person executing this Agreement as President of the Seller has full right and authority to act on behalf of the Seller.

C. The Seller agrees that at its sole cost and expense to comply with all applicable laws, including provisions of the Uniform Commercial Code relating to "Bulk Sales" to secure the transfer of title to the Assets to Purchaser free of any encumbrance or defect of any kind or sort except as otherwise expressly assumed or taken subject to by Purchaser herein.

5. Lease. The Seller herein, as Landlord, and Buyer as Tenant, shall lease, by way of separate legal instruments, the terms of which have been mutually agreed upon, certain real property located in Syosset, L.I., New York.

6. Fees. Seller hereby assumes and saves Buyer harmless from the payment of any and all brokerage, finder and similar fees related to this transaction.

7. Further Assurances. The representations, warranties and agreements of the parties contained in this Agreement shall not be discharged or dissolved upon but shall survive the execution of this Agreement. The Seller and the Buyer agree that after the execution of this Agreement each will, from time to time, upon the reasonable request of the other party, execute, acknowledge and deliver in proper form any instruments of conveyance or further assurance necessary or desirable to effect the consummation of the transactions provided for herein.

8. Exhibits. Each Exhibit or Schedule attached hereto shall be incorporated into and be a part of this Agreement. If any Exhibit referred to in this Agreement shall not be attached hereto at the time of the execution of this Agreement, or if any such agreement shall be incomplete, such Exhibit may be later attached or completed by mutual consent of the parties and such Exhibits, shall, as later attached or completed, for all purposes be deemed a part of this Agreement as if attached hereto or completed at the time of execution.

9. Closing. The purchase and sale provided for in this Agreement shall be closed on September 1, 1974.

10. Miscellaneous.

1. Buyer does not and has not by this Agreement assumed any obligations of Sellers, or any of them, or of any entity either owned or controlled by Sellers, or any of them, including but not limited to unpaid taxes, unpaid creditors, or lien claimants, except as expressly otherwise provided in this Agreement.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that neither party shall assign any of its rights or privileges hereunder without the prior written consent of the other except that Buyer may assign all or part of its rights, privileges and obligations hereunder to a wholly-owned subsidiary or affiliate of Buyer.

3. Any notice, request or other document to be given hereunder to either of the parties by the other shall be in writing and delivered personally or sent by mail, postage prepaid as follows:

If to Sellers, addressed to:

Bader Brothers
c/o Herman Bader
22 Reed Drive
Roslyn, New York

and to:

George Bader
16475 Lochness Court
Miami Lakes, Florida 33014

with a copy to:

Martin Fred Greenberg, Esq.
Suite 1920
1 Biscayne Tower
2 South Biscayne Boulevard
Miami, Florida 33131

If to Buyer, addressed to:

Greyhound Van Lines, Inc.
Attention: William Fronk
P. O. Box 3020
Bellevue, Washington

with a copy to:

Ferguson & Burdell
Attention: William B. Moore
1700 Peoples National Bank Building
Seattle, Washington 98171

4. This Agreement shall be governed, construed and enforced by the courts of and in accordance with the laws of the State of Washington except in respect to obligations under the lease which shall be governed by the laws of the State of New York.

5. This instrument contains the entire agreement between the parties hereto with respect to the purchase and sale and other transactions contemplated herein and may not be modified except by an instrument in writing.

6. Sellers and Purchaser shall each pay their own expenses in connection with this Agreement. Nothing herein shall limit the liability of one party to the other for its default in complying with this Agreement.

IN WITNESS WHEREOF, the parties have placed their hands and seals on the day first above mentioned.

WITNESS:

/s/ JULES JACOBS
(As to Seller)

/s/ M. E. BOLSTER

/s/ M. E. BOLSTER
(As to Buyer)

BUSHWICK TRAILERS INC., BADER BROS. VAN LINES, INC., AND BADER BROS. WAREHOUSES, INC.

BY: /s/ HERMAN BADER
President
Attest: /s/ DANIEL BADER
Secretary

GREYHOUND VAN LINES, INC.
BY: /s/ WILLIAM R. FRONK
V.P.
Attest: /s/ BERTON S. CLARK, JR.
Secretary

GENERAL COUNSEL'S EXHIBIT A

OFFICE EQUIPMENT

SCHEDULE A

ITEM:

2 fully furnished Executive Office, except designated pictures

1 Conference Room - 10 Ft. Table & 10 Chairs

3 Managers Offices

32 other desks & 40 chairs

4 Safes

1 Ditto Combomatic 11 Duplicator-Copier - Model E221-Ser. #1204

1 N.C.R. 3600 Acctg. Machine - Ser. # 8494032

1 Friden 5015 Compu-Type & Aux. Keyboard - Ser. # 2121

14 Manual Typewriters –

2 Smith Corona	2 Royal (1 in Repair Shop)
2 Facit	2 Underwood Five
2 Hermes	1 Underwood 21
3 Remington (1 in Whse)	

5 Electric Typewriters - 1 IBM

4 Underwood 702

11 Calculators –

5 Multisumma 20	2 Victor 75-85-54
1 Divisumma 24	1 Summa Quanta 20
1 Divisumma 14	1 Union

2 Paymaster Check Writers - Ser. # 8A14570, 8U-11506

1 Gates Noise Control Cabinet

75 Metal File Cabinets –

3 Four-Drawer Fire Proof Files @ $300 ea.

4 Two-Drawer Files @ $20 ea.

16 Three-Drawer Files @ $30 ea.

38 Four-Drawer Files @ $40 ea.

4 Misc. Card Files @ $50 ea.

6 Five-Drawer Files @ $75 ea.

7 sections of open shelf vertical files - Conser-A-File

6 Stationary Cabinets

4 Dictaphone Machines

Intercome System

2 Refrigerators

Office is fully carpeted

3 Fire Extinguishers

30 Waste Baskets

30 Floor Mats

1 Simplex Time Machine & Card Holders

1 Hoover Heavy Duty Vacuum

1 Blackboard & Bulletin Board, Maps, Dispatch Boards

3 Coal Racks

2 Step Stools

11 – 1 & 2 & 3 Drawer Index Files

1 Water Cooler - Temprite

3 Tables

3 Electric Hand Dryers

5 Reception Area Chairs

3 Reception Area Tables, 2 Clocks

1 Pitney Bowes Mailing Machine - # 10363 + Scale # S-103

2 Ledger Card Carriers for N.C.R.

"Desk Toppers" - Paper Organizers, Misc. Paper Trays, Pencil Sharpeners, Paper Separators, etc.

Misc. Office Equipment & Supplies -

Cutting Board, Pencils, Pens, Clips, Typewriter Ribbons, Carbon, Staples, Advertising Novelties, Literature, etc.

100,000 lb. 50' Electronic Scale

Total

GENERAL COUNSEL'S EXHIBIT B

EQUIPMENT IN WAREHOUSE

ITEM:

2 Pallet Jacks - Multiton S-27-48 Ser. # 63891 + WHUA35 Ser. # S7193

2 Aluminum Dock Boards

2 12 Ft. Aluminum Ramps

3 Walk Boards

15 Fire Extinguishers - General

20 Ton Paper Baler - Consolidated STDS5 Ser. # 2077

1 De Walt Panel Saw - Multiplex-40-B

Drive in Racks

20 Ft. Wide Shelf Rack - 360 Ft. Long plus Decking

2 Semi Auto Air Nailers + Nailes + Staples

Steel Strapping Equipment + Stapping + Clips

2 Lever Pry Dollies + 2 Lug Alls

4 American Steel Dollies - 2 Fairbanks and 2 Julius Fowl

2 Magnesium Dollies

2 Roll-a-Lifts

2 Drum Dollies + 4 Hand Trucks @ $50.00 each

Complete inventory of cartons and packing equipment + misc. equip.

400 Furniture containers - 250 Cu. Ft.

9 Parlor Pallets - 10' x 8' x 8'

128 Jarke Steel Stack Racks - 5,000 Lb. Cap. each

4,000 Pallet Pads

450 Furniture Van Pads

350 Various sizes wood pallets

20 Chain Binders & Chains, Steel + Alum. Jump Plates

4 Machine Jacks - 2 Duff Norton # 1528-15 Ton and 2 Simplex-5 Ton

4 Tarpolins

2 Piano Covers (B.G.)

Rope

Steel Shelving

5 Swing Top Disposal Cans @ $25.00 ea. + 3 Step Ladders @ $5.00 ea.

3 Disposal Bag Holders + 2 Carriers

1 Westinghouse Water Cooler

1 Fairbanks Platform Scale

1 Curtis Compressor @ $150.00 + 1 Wardrobe Cabinet @ $10.00

4 Work Benches @ $100.00 ea. + 1 Refrigerator @ $50.00 (Crating Shop)

2 File Cabinets, Desks, & Chairs (Crating Shop + Stock Room)

Stock Room - Extra Light Fixture Ballasts, N.C.R. & Friden Forms, Tape, Tags, Stationery Supplies, Literature, Etc.

100 Dollies + 50 Spare Dollie Wheels

75 Four & Six Wheel Rolling Bins

Reinforced Plastic Pallet Covers

9 Gravity Wheel Conveyors

3 "A" Frames with Masonite

Car Loading Ramps

24 Clothing Lockers

Fairbanks Morse Platform Truck

4 Fork Extensions for Fork Lifts

Roof Repair, Rug spotter, Cleaning agents

Total

FURNITURE REPAIR SHOP

ITEM:

Wood Lathe - Power King

Band Saw - Delta-Model 28-290 Ser. # D65033

Paint Spray Equipment

Sander - Craftsman Model 115 6962

3 Grinders - Craftsman, Dunlap, Powercraft

Table Saw - Atlas

Jig Saw - Craftsman

Drill Press - Atlas

Router - Power King

Vacuum

Pedestal Fan - Robbins & Myers

Various Tools & Materials, Clamps

10 lb. CO_2 Fire Foe Model 10C

Work Benches

Storage Cabinet

2 File Cabinets - 4 Drawer

2 Steel Storage Shelves

1 Desk & Chair

Total

TRUCK REPAIR & MAINTENANCE SHOP

ITEM:

7 1/2 H.P. Compressor with 120 Gal. tank

1 Truck Lift

1 Car Lift

Snow Plow Equipment

1 Gantry

Welding Equipment Eutectic - plus rods

Welding Acteleyne

Paint Spray Equipment

1 Wayne Floor Sweeper # 528

1 Steam Jenny

Grinder Craftsman Model 397-19580

Drill Press - Atlas

Truck Washer - Korkay

Full line of tools & equipment-plus parts (inventory in Stock Room)

Oil Reel

8 Fire Extinguishers - CO2

1 Refrigerator

1 Desk & Chair

7 Clothing Lockers

2 File Cabinets - 4 Drawer

10 Storage & Tool Cabinets

2 Battery Chargers

Black Top Patch

2 Ladders

1 Chain Hoist - Heavy Duty

Stock Room Shelving

Tires

TRAILERS

FLEET	YEAR	MAKE	TYPE
48T	1957	KGHM	35' SA
87T	1960	HYWAY	40' Tan FB
92T	1961	HYWAY	35' SA
95T	1961	HYWAY	35' SA
96T	1961	HYWAY	32' SA PAL
104T	1954	STRICK	35' SA FRY
113T	1957	FRUE	33' TAN FRT
114T	1957	FRUE	33' TAN FRT
115T	1957	FRUE	33' TAN FR
117T	1957	FRUE	33' TAN FRT
119T	1957	FRUE	33' TAN FRT
122T	1966	FRUE	40' AIR TAN
123T	1966	FRUE	40' AIR TAN
124T	1966	FRUE	40' AIR TAN
125T	1966	FRUE	40' AIR TAN
126T	1966	FRUE	40' AIR TAN
130T	1966	TRIMO	36' SA ALUM
134T	1951	FRUE	35' TAN FL BD
135T	1949	CTAMM	22 1/2' TAN
141T	1968	DORSEY	36' SA
148T	1968	DORSEY	36' SA

TRAILERS

158T	1969	TRIMO	40' AIR TAN
166T	1971	MATL	40' TAN
167T	1971	MATL	40' TAN
168T	1971	MATL	40' TAN
169T	1971	MATL	40' TAN

FLEET	YEAR	MAKE	TYPE
171T	1971	MATL	40' TAN
172T	1971	MATL	40' TAN
173T	1971	MATL	40' TAN
174T	1971	MATL	40' TAN
175T	1971	MATL	40' TAN
183T	1973	MATL	42'
184T	1969	TBC	40'
503T	1956	NABORS	32 1/2'
22T	1946	FRUEHAUF	28'
31T	1946	FRUEHAUF	34'
35T	1955	FRUEHAUF	35'
54T	1956	FRUEHAUF	35'
105T	1954	STRICK	35'
111T	1957	FRUEHAUF	33'
112T	1957	FRUEHAUF	33'
114T	1957	FRUEHAUF	33'

TRUCKS

TOW # 2	1949	GMC	TOW TRUCK
30V	1961	CHEV	22' VAN
42V	1961	CHEV	20' VAN
43V	1962	CHEV	FLATBED
70V	1966	CHEV	22' TAIL LIFT
74V	1966	CHEV	22' TAIL LIFT
80V	1968	CHEV	STEP IN VAN
82V	1968	CHEV	STEP IN VAN

FLEET	YEAR	MAKE	TYPE
98V	1965	CHEV	3/4 TON P/U
99V	1969	FORD	VAB

FORKLIFTS

FLEET	YEAR	MAKE	COLOR	TYPE	SERIAL
4	1963	CLARK	RED	CAR. CAP. - 7000	UTF 85-518
5	1946	CLARK	YELLOW	CAR. CAP. - 1000	4670
9	1967	CLARK	GREEN	CAR. CAP. - 5000	CF50B513894

CARS

FLEET	YEAR	MAKE	TYPE
10P	1962	WILLYS	JEEP-RED
16P	1966	CADILLAC	SEDAN 4 DR WT
17P	1966	PONTIAC	SED 4 DR YEL
18P	1964	PONTIAC	SED 2 DR BR
23P	1970	TOYOTA	SED WHITE
24P	1963	FORD	SED MAROON

STATION WAGONS

12SW	1966	CHEV	STA. WAG. TAN

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

On this 10th day of September, 1974, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared Herman Bader and Daniel Bader, to me known to be the President

and Secretary respectively of BUSHWICK TRAILERS, INC., BADER BROS. VAN LINES, INC., and BADER BROS. WAREHOUSES, INC., the corporations that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

/s/ ANN M. UBERT
Notary Public in and for the State of New York, residing at 100 Hamilton Ave., Massapequa, N. Y.

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

On this 1st day of September, 1974, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared /s/ WILLIAM R. FRONK and /s/ BERTON S. CLARK, JR., to me known to be the V.P. Fin & Adm and Secretary, respectively, of GREYHOUND VAN LINES, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

/s/ MARSHA E. BOLSTER
Notary Public in and for the State of Washington, Residing at Bellevue, Washington

My Commission Expires 3/?/78

GENERAL COUNSEL'S EXHIBIT NO. 6

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this day of September, 1974, by and between BADER BROS. WAREHOUSES, INC., a New York Corporation, hereinafter referred to as "Landlord" and GREYHOUND VAN LINES, INC., an Indiana corporation having its principal offices at P. O. Box 3020, Bellevue, Washington, hereinafter referred to as "Tenant"; WITNESSETH:

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, Landlord and Tenant agree as follows:

1. DESCRIPTION OF PREMISES.

Landlord leases to Tenant and Tenant does hereby take and rent from Landlord that certain warehouse and offfice space consisting of approximately 51,000 square feet, known generally as 475 Underhill Boulevard in the City of Syosset, County of Nassau, State of New York, together with approximately three and one-half acres of adjoining property located in same city, county and state, legally described as follows:

> BEGINNING at a point on the southeasterly side of Underhill Boulevard, distant 1846.08 feet northerly and northeasterly when measured along the easterly and southeasterly side of Underhill Boulevard from the corner formed by the intersection of the easterly side of Underhill Boulevard with the northerly side of Underhill Boulevard, North 39 degrees 19 minutes 45 seconds East 302.99 feet to a point; running thence South 48 degrees 57 minutes 27 seconds East 563.09 feet to the northerly side of land of the Long Island Railroad, South 41 degrees 02 minutes 33 seconds West 123.68 feet to the

northeasterly line of land, now or formerly of Kollsman Instrument Co.,; running thence along the said northeasterly line of Kollsman Instrument Co., South 82 degrees 54 minutes 42 seconds West 240.61 feet; and running thence North 48 degrees 57 minutes 27 seconds West 393.44 feet to the southeasterly side of Underhill Boulevard, at the point or place of BEGINNING.

In the event the foregoing legal description is in any way incomplete or inaccurate, Landlord authorizes Tenant to correct the above description to effectuate the intent of the parties. In consideration of payment by Tenant of all applicable taxes accruing from September 1, 1974, Tenant is given an option exerciseable in writing at any time within the first sixty (60) days of the Lease provided herein, Tenant may lease the entire five-plus acres adjoining the warehouse and office which included the three and one-half acres hereinabove provided at the increased rental provided by the rent provision and legally described as follows:

BEGINNING at a point on the southeasterly side of Underhill Boulevard, distant 1421.09 feet northerly and northeasterly when measured along the easterly and southeasterly side of Underhill Boulevard from the corner formed by the intersection of the easterly side of Underhill Boulevard with the northerly side of Jericho Turnpike; and running thence along the southeasterly side of Underhill Boulevard, North 39 degrees 19 minutes 45 seconds East 424.99 feet to a point; running thence South 48 degrees 57 minutes 27 seconds East 393.44 feet to the northerly line of land, now or formerly of Kollsman Instrument Co., running

thence along the said northerly line of land of Kollsman Instrument Co., South 82 degrees 54 minutes 42 seconds West 570.45 feet to the southeasterly side of Underhill Boulevard at the point or place of BEGINNING.

2. TERM OF LEASE.

The basic term of this Lease Agreement shall be for a period of one hundred and twenty months (120), commencing on the 1st day of Sept., 1974, at which time the Tenant's obligations to pay rent and other charges provided for herein shall commence and become due and payable, and shall continue until the 31st day of August 1984.

3. RENT.

Tenant shall pay to the Landlord a net annual rental per annum in equal monthly installments on or before the 10th day of each month in advance for the following month during the term of this Lease Agreement, the first installment of which shall be paid at the date of execution hereof. Such installments shall be paid to the Landlord at the address as the Landlord shall from time to time designate in writing.

In the event that Tenant exercises the option hereinbefore provided to lease the entire five-plus acres adjoining the warehouse and office space hereinabove provided, rent reserve shall be increased per annum pro-rated to the date the option is exercised for a net annual rental thereafter for the entire warehouse and office space plus five-plus adjoining acres of per annum.

4. TAXES AND ASSESSMENTS.

In addition to the basic rental hereinbefore provided to be paid by Tenant to Landlord, Tenant agrees to pay to Landlord all real estate taxes, water, sewer charge, assessments and other governmental levies imposed

against the leased property from and after the date occupancy commences and pro-rated to that date and the date occupancy should cease as hereinafter provided.

Payments by Tenant on account of taxes and assessments shall be made when due after delivery to the Tenant by the Landlord of a photocopy of the tax bill showing the amount of the particular installment of such taxes and assessments and in no event later than 15 days prior to the expiration of any grace period.

Tenant shall have the right to contest or review by legal or other proceedings or in such other manner as Tenant may deem suitable, any tax or assessment for which Landlord would be entitled to reimbursement herein subject only to the condition that Landlord shall previously have paid such tax or assessment under protest (which Landlord agrees to do if so requested by Tenant) or in the alternative, Tenant shall have furnished to Landlord a surety bond or other security satisfactory to Landlord, securing the payment of such contest or review. Landlord shall, if so requested by Tenant, join in any proceedings for contest or review of such taxes or assessments but the entire cost of such proceedings shall be borne by Tenant.

5. INSURANCE AND DAMAGE OR DESTRUCTION.

During the term of this lease, Tenant at its sole cost and expense, and for the mutual benefit of Landlord and Tenant, shall carry and maintain the following types of insurance in the amounts specified:

(1) Fire and extended coverage insurance covering the leased premises against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "extended coverage", so called, in amounts sufficient to prevent Landlord or Tenant from becoming a coinsurer under the terms of the applicable policies.

(2) Comprehensive public liability insurance including property damage, insuring Landlord and Tenant against liability for injury to persons or property occurring in or about the leased premises or arising out of the ownership, maintenance, use or occupancy thereof. The liability under such insurance shall not be less than for any one person injured or killed and not less than for any one accident and not less than for personal property damage per accident.

(3) Rent or rental value insurance against loss of rent or rental value due to fire, including extended coverage endorsement, in an amount equal to the annual rent for the leased property plus the estimated amount of additional rent and impositions.

All policies of insurance (except liability insurance) shall provide by endorsement that any loss shall be payable to Landlord or Tenant as their respective interests may appear. The Tenant shall have the privilege of procurring and obtaining all of such insurance through its own sources. Tenant shall deliver to Landlord the aforesaid policies of insurance or certificates evidencing such insurance, with proof of payment of the premiums thereof, at or before the commencement of the terms hereof, and renewal policies (or certificates) at least thirty (30) days prior to the expiration of any such policy.

If the Tenant fails to do so, the Landlord may procure such insurance and Tenant shall, on demand, pay the premiums therefor and/or reimburse Landlord for all monies expended by him for that purpose.

In the event the premises shall be destroyed or so damaged or injured by fire or other casualty during the life of this agreement, whereby the

same shall be rendered untenantable, then the Landlord shall have the right to render said premises tenantable by repairs within ninety days therefrom. If said premises are not rendered tenantable within said time, it shall be optional with either party hereto to cancel this lease, and in the event of such cancellation the rent shall be paid only to the date of such fire or casualty. The cancellation herein mentioned shall be evidenced in writing.

6. EXPENSES.

The Tenant shall pay all of expenses in the operation of the leased property except any interest and amortization on any mortgages or deeds of trust encumbering the fee title at any time or rentals payable by the Landlord as Tenant under superior lease or any state, inheritance, income or other personal taxes of the Landlord.

7. ALTERATIONS AND REPAIRS.

The Tenant may, at its sole cost and expense, from time to time during the term of this lease make such alterations, additions or changes, structural or otherwise, in and to the leased premises as it finds necessary and convenient for its purposes. Tenant shall prevent any lien or obligation from being created against or imposed upon the leased premises and will discharge all liens or charges for services rendered and materials furnished immediately after said liens occur or said charges become due and payable. At Landlord's request, Tenant shall restore the leased premises to their former condition at the expiration of the term of this Lease, fair wear and tear excepted.

The Tenant shall have the sole responsibility to maintain the demised premises and shall at its own expense, make all repairs in and to the leased premises, interior and exterior, ordinary and extraordinary, structural and otherwise, and to the sidewalks, driveways and parking lots and in particular to provide the required maintenance, adjustments and service on the weighing scale, for the duration of the term of this lease.

8. CONDEMNATION.

It is understood and agreed that if the whole of the demised premises shall be taken for any public or quasi-public use under any statute; or by right of eminent domain, or by private purchase by any public authority in lieu of the exercise of the right of eminent domain or if any part of the premises is so taken and the part not so taken is insufficient for the reasonable operation of Tenant's business, then, in either of such events, this lease and the term hereby granted shall cease and expire on the date when possession shall be taken thereunder of the premises or part thereof and all rents, taxes, and other charges shall be prorated and paid to such date.

In the event that only a part of the demised premises is so taken and the part not so taken shall be sufficient for the reasonable operation of Tenant's business, this lease shall remain unaffected except:

(a) Tenant shall be entitled to a prorated reduction in the fixed rent to be paid hereunder, based on the proportion which the space so taken bears to the space originally demised, provided that consideration shall be given to the respective values of the space taken and the space not taken.

(b) Tenant shall promptly after such taking, and at Tenant's own cost and expense, restore that part of the building not so taken to as near its former condition as the circumstances will permit, and Landlord shall contribute to the cost thereof a sum not exceeding in any event that part of the net award actually received by Landlord, after payment of reasonable expenses of collection, including attorney's fees, which shall be

specifically attributed to the building by the condemnation court, or, if not so attributed, as shall be determined by arbitration as provided in section hereof.

In case of any such taking, whether of all or any part of the demised premises, and regardless of whether this lease survives, the entire award shall belong solely to Landlord, and Tenant hereby assigns such award to Landlord. Tenant shall not be entitled to any payment based upon the value of the unexpired term of this lease, consequential damages to the land not so taken or the diminution of the value of the land not so taken, or otherwise.

In the event of any partial taking as provided in this article, and Landlord and Tenant shall be unable to agree as to whether the part not so taken shall be sufficient for the reasonable operation of Tenant's business, or as to the reduction, if any, in the fixed rent, such dispute shall be submitted to arbitration in the manner provided in section hereof.

Without giving Tenant any interest in the award as such, Landlord covenants to pay to Tenant that portion of the amount of the condenmation award specifically allocable to the building as the cost of the capital improvements installed by Tenant, amortized on a Ten (10) year life, shall bear to that part of the award allocable to the building. So much of the award as is thus to be paid to Tenant shall be deemed a trust fund in the hands of Landlord. Tenant shall receive the award, if any, for such personal property and trade fixtures as may belong to Tenant and may be taken in condemnation.

9. COMPLIANCE WITH LAWS.

Landlord warrants and represents that at the time Tenant's occupancy commences, all applicable laws and ordinances have been complied with by Landlord so that the premises are available for the purposes and uses intended by Tenant.

During Tenant's occupancy, the premises may be used by Tenant for any lawful purpose whatever and Tenant shall at Tenant's sole cost and expense comply with all statutes, ordinances, rules, orders, regulations and/or requirements of all county, municipal, state, federal and other applicable governmental authorities now in force or which may hereinafter be in force pertaining to the leased premises.

10. DISCLOSURE OF ENCUMBRANCES AND INDEMNIFICATION BY LANDLORD.

Prior to this Lease Agreement becoming effective, Landlord shall disclose to Tenant by appropriate title report all encumbrances and restrictions on the leased premises or the use of the leased premises. During the term of this Lease Agreement, Landlord shall not without the prior written consent of Tenant by Landlord's affirmative action alter the encumbrances or restrictions on the property in a manner that would adversely affect Tenant's use and enjoyment of the property except to an institutional first mortgage which may be obtained without Tenant's consent.

11. TENANT'S RIGHT OF FIRST REFUSAL.

In the event that Landlord should desire to sell or otherwise convey its interest in the leased premises, Landlord shall first notify Tenant. If at any time during the term of this Lease, Landlord shall receive a bona fide offer from any person to purchase the premises, Landlord shall send Tenant a copy of the proposed contract and notify Tenant of the intention of Landlord to accept the same. Tenant shall have the right within thirty (30) days to accept the terms of the proposed contract in writing and within thirty (30) days thereafter to purchase the leased premises in its own name or the name of its nominee. If Tenant shall not so elect within the said period, Landlord may then sell the leased premises to the prospective buyer, provided the sale is on the same terms and conditions and for the price set forth in the proposed contract sent to Tenant.

This provision shall not apply to transfers from landlord in good faith to a stockholder or stockholders or to a corporation or corporations, controlled by one or more of such stockholders but this right of first refusal shall remain in effect after such transfer.

In the event Tenant fails to excuse the aforesaid right of first refusal in connection with the proposed sale, then such right shall be extinguished upon the consummation of said sale; however, if such is not consummated, the right of first refusal shall remain in effect.

12. LANDLORD'S COVENANT OF QUIET ENJOYMENT.

Tenant upon paying the rent and other charges herein provided and subject to all of the terms and covenants of this Lease on Tenant's part to be performed, and subject to the provisions of any mortgage or deed of trust to which this Lease is subordinate, shall have quiet and peaceful possession and enjoyment of the leased premises during the term of this Lease Agreement, and Landlord warrants and agrees to defend Tenant in such peaceful and quiet use against the lawful claims of all persons.

Tenants hereby accepts the premises in the condition they are in at the beginning of this lease and agrees to maintain said premises in the same condition, order and repair as they are at the commencement of said term, excepting only reasonable wear and tear arising from the use thereof under this agreement, and to make good to said Landlord immediately upon demand, any damage to water apparatus or electric lights or any fixture, applicances or appurtenances of said premises, or of the building, caused by any act or neglect of Tenant, or of any person or persons in the employ or under the control of the Tenant.

13. TRANSFER OF POSSESSION.

Landlord agrees to grant possession of the leased premises on or before the date of commencement of the term of this Lease and acceptance of such

possession by the Tenant shall terminate the Landlord's obligation to maintain the leased premises except as specifically herein provided and shall further indicate the Tenant's acceptance of the premises as being in satisfactory condition.

14. DEFAULT.

If Tenant should fail to pay any installment of rental or any other sums required to be paid by Tenant to Landlord when the same shall become due and such default shall continue for a period of fifteen (15) days or;

Tenant shall default in the performance of any other obligation required to be performed by Tenant (other than the payment of rental or other sums payable to Landlord) and such default (unless within said thirty (30) days period the Tenant shall commence steps for the curing of such default and shall thereafter use reasonable diligence in the curing thereof); or

Tenant shall be adjudicated a bankrupt or petitioned by or against Tenant for reorganization or adjustment of its obligations under the Bankruptcy Act shall be approved, or Tenant shall make a general assignment of its property for the benefit of creditors; and

Then the Landlord, at Landlord's option, shall have any of the following remedies:

1. Landlord may, without barring later election of any other remedy and without taking possession of the leased premises require strict performance of all of the covenants and obligations hereof as the same shall respectively accrue and shall have the right of action therefor, or

2. If the Tenant shall abandon or vacate said premises before the end of the term of this lease, or shall suffer the rent to be in arrears, the Landlord may, at his option, forthwith cancel this lease or he may enter said

premises as the agent of the Tenant, by force, or otherwise, without being liable in any way therefore, and relet the premises with or without any furniture that may be therein; as the agent of the Tenant, at such price and upon such terms and for such duration of time as the Landlord may determine and receive the rent therefor, applying the same to the payment of the rent due by these presents, and if the full rental herein provided shall not be realized by Landlord over and above the expenses to Landlord in such reletting, the said Tenant shall pay any deficiency, and if more than the full rental is realized Landlord will pay over to said Tenant the excess of demand.

A waiver by the Landlord of any default by the Tenant in the performance of any of the covenants, terms or conditions of this Lease shall not constitute or be deemed a waiver of any subsequent or other default. The rights and remedies of the Landlord under this Lease shall be cumulative and in addition to any other rights given to the Landlord by law. The exercise of any right or remedy shall not impair Landlord's rights to any other remedy.

15. SUBLEASE OR ASSIGNMENT.

Tenant may assign this lease or sublet the premises, either in whole or part, to a subsidiary or entity affiliated with it. In the event it desires to otherwise assign or sublet same, Landlord shall have a first refusal after being given 30 days written notice by Certified Mail, Return Receipt Requested to accept a surrender and acceptance of said Lease. If the Landlord shall not exercise this privilege within the said thirty (30) day period, the Tenant shall be free to assign this Lease or sublease the leased premises either in whole or in part, provided that the Tenant shall remain primarily and directly liable

to the Landlord for the full payment of all sums which may be due to become due hereunder and for the full performance of all of the terms and conditions of this Lease. The liability of the Tenant for full compliance with all of the terms and conditions of this lease shall remain in full force and effect upon an assignment or sublease to a subsidiary or entity affiliated with it. In no event shall an assignment or sublease release Golden Cycle Corporation from its liability under its guarantee, or in anywise affect such guarantee, which was executed simultaneously herewith, as attached hereto and made a part hereof.

16. NOTICE.

Any notice to be given by either party to the other pursuant to the provisions of this Lease shall be in writing and shall be given by registered or certified mail, return receipt requested, addressed to the party for whom it is intended at such address as may from time to time be designated in writing by the parties.

17. TIME.

It is understood and agreed between the parties hereto that time is of the essence of the Lease and this applies to all terms and conditions contained herein.

18. RIGHT OF ENTRY.

The Landlord or his agents shall have the right to enter the leased premises during all reasonable hours to exhibit the premises and put or keep upon the doors or windows or any other prominent area thereof a notice "For Sale or Rent" at any time within one hundred and eighty (180) days before the expiration of this Lease.

19. COLLECTION FEE.

The Tenant agrees to pay the cost of collection and ten (10%) percent attorney's fees on any part of the rental that may be collected by suit after the same is past due.

20. MODIFICATION.

This Lease may be modified, amended or surrendered only by an instrument in writing duly executed by the Landlord and Tenant.

21. APPOINTMENT OF TENANT AS ATTORNEY IN FACT.

The Landlord appoints the Tenant attorney-in-fact of the Landlord for the purpose of making all payments to be made by the Tenant pursuant to any of the provisions of this Lease to persons other than the Landlord. In case any person to whom any sum is directly payable by the Tenant under any of the provisions of this Lease shall refuse to accept payment of such sum from the Tenant, the Tenant shall thereupon give written notice of such fact to the Landlord who shall thereupon pay such sum to such person and it is mutually understood and agreed that the covenants and agreements contained in ~~the~~ within lease shall be binding upon the parties hereto and upon their respective successors, heirs, legal representatives and assigns.

22. RECORDING.

Landlord does hereby expressly consent to the recording of this lease or a memorandum thereof at Tenant's sole cost and expense with any appropriate governmental body.

23. FURTHER ASSURANCES.

It is the intent of the parties hereto that this Lease Agreement be legally efficacious, and the parties hereby agree to execute at the reasonable request of the other all such documents or instruments not inconsistent with the provisions hereof as are necessary and proper to consummate this Agreement.

24. ARBITRATION.

Any dispute arising under this agreement shall be finally determined by a panel of three arbitrators with each party designating one arbitrator and the two selecting the third.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement or have caused the same to be executed by their duly authorized officers this 1 day of September, 1974.

LANDLORD

/s/ Bader Bros. Warehouses, Inc.

By /s/ Herman Bader

Title Pres.

Attest:

/s/ Daniel Bader

Title Secretary

TENANT

GREYHOUND VAN LINES, INC.

By /s/ William R. Fronk

Title V. P. Fin & Admin

Attest:

Benton S. Clark

Title secretary

STATE OF NEW YORK)
) SS:
COUNTY OF NASSAU)

On this 10th day of September, 1974, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared Herman Bader and Daniel Bader, to me known to be the President and Secretary respectively of BUSHWICK TRAILERS, INC., BADER BROS. VAN LINES, INC., and BADER BROS. WAREHOUSES, INC., the corporations that executed the foregoing instrument, and acknowledged the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and offical seal hereto affixed the day and year first above written.

Ann M. Ubert
Notary Public in and for the State of New York, residing at 100 Hamilton Ave., Massapequa, NY

STATE OF WASHINGTON)
) SS:
COUNTY OF KING)

On this 1st day of September, 1974, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared William R. Frank and Benton S. Clark, Jr. to me known to be the V.P. Fin & Adm. and Secretary, respectively, of GREYHOUND VAN LINES, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary

act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

/s/ Marsha E. Bolste

Notary Public in and for the State of Washington, residing at .

Residing at: Bellevue, Washington

My Commission

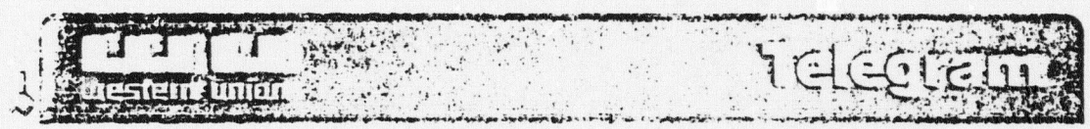
Expires: 3/9/78

GENERAL COUNSEL'S EXHIBIT NO. 7

HEB005(0142)(1-000491A080)PD 03/21/75 0139
ICS IPMABYB ALB TWX 5103716100 BADERBROS EDT
02075 ICS IPMDCNA NYK 1-040344A079 03-20 1811
PMS
03175 FR DC NEW YORK NY 183 03-20 0629P EDT
BADER BROS INC
475 UNDERHILL BLVD
SYOSSET NY 11791

WE HAVE LEARNED THAT YOU INTEND TO SELL OR HAVE SOLD YOUR OPERATION TO GOLDEN CYCLE VAN OF NEW YORK INC IN ACCORDANCE WITH THE TERMS OF YOUR COLLECTIVE BARGAINING AGREEMENT WITH THIS UNION YOU ARE REQUIRED AMONG OTHER TINGS TO GIVE NOTICE OF EXISTENCE OF THIS AGREEMENT TO GOLDEN CYCLE IN WRITING WITH A COPY OF SAID NOTICE TO BE SERVED UPON THE UNION AND THE EXACT NATURE OF YOUR TRANSACTION WITH GOLDEN CYCLE EXCLUDING FINANCIAL DETAILS. YOU

SF-1201 (R5-68)



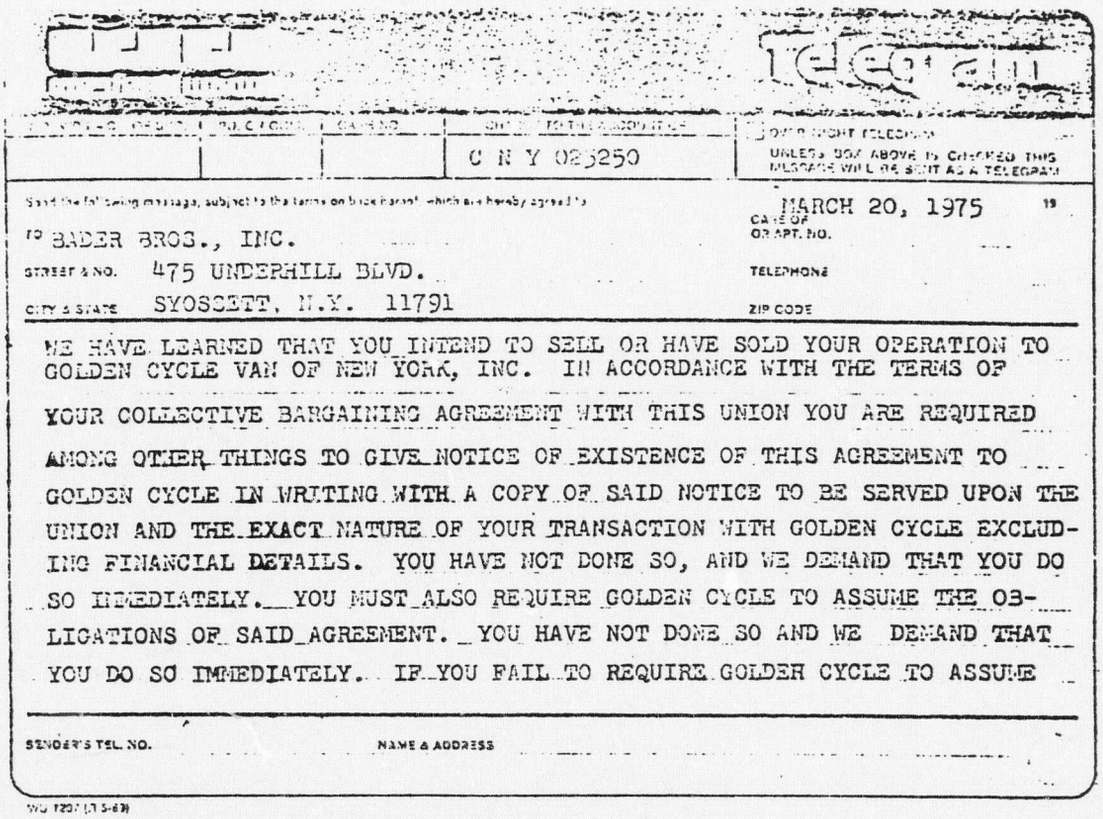
HAVE NOT DONE SO AND WE DEMAND THAT YOU DO SO IMMEDIATELY. YOU MUST ALSO REQUIRE GOLDEN CYCLE TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT YOU HAVE NOT DONE SO AND WE DEMAND YOU DO SO IMMEDIATELY. IF YOU FAIL TO REQUIRE GOLDEN CYCLE TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT YOU WILL BE HELD LIABLE TO THE UNION AND THE EMPLOYEES FOR ALL DAMAGES SUSTAINED AS A RESULT OF YOUR FAILURE TO REQUIRE ASSUMPTION OF THE TERMS OF THIS AGREEMENT AND THE UNION SHALL TAKE WHATEVER LAWFUL ACTION IT DEEMS NECESSARY TO PROTECT ITS MEMBERS AND CONTRACT AND THE INTEGRITY OF IT CONT RACT

(SIGNED) VINCENT BRACCO, PRESIDENT
LOCAL 814 I.B.T.
NNNN

SF-1201 (R5-68)

BEST COPY AVAILABLE

GENERAL COUNSEL'S EXHIBIT NO. 8



NO. WDS. - CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	OVER NIGHT TELEGRAM
			C N Y 025250	UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM

Send the following message, subject to the terms on back hereof, which are hereby agreed to

MARCH 20, 1975 19

TO BADER BROS., INC.

CARE OF OR APT. NO.

STREET & NO. 475 UNDERHILL BLVD.

TELEPHONE

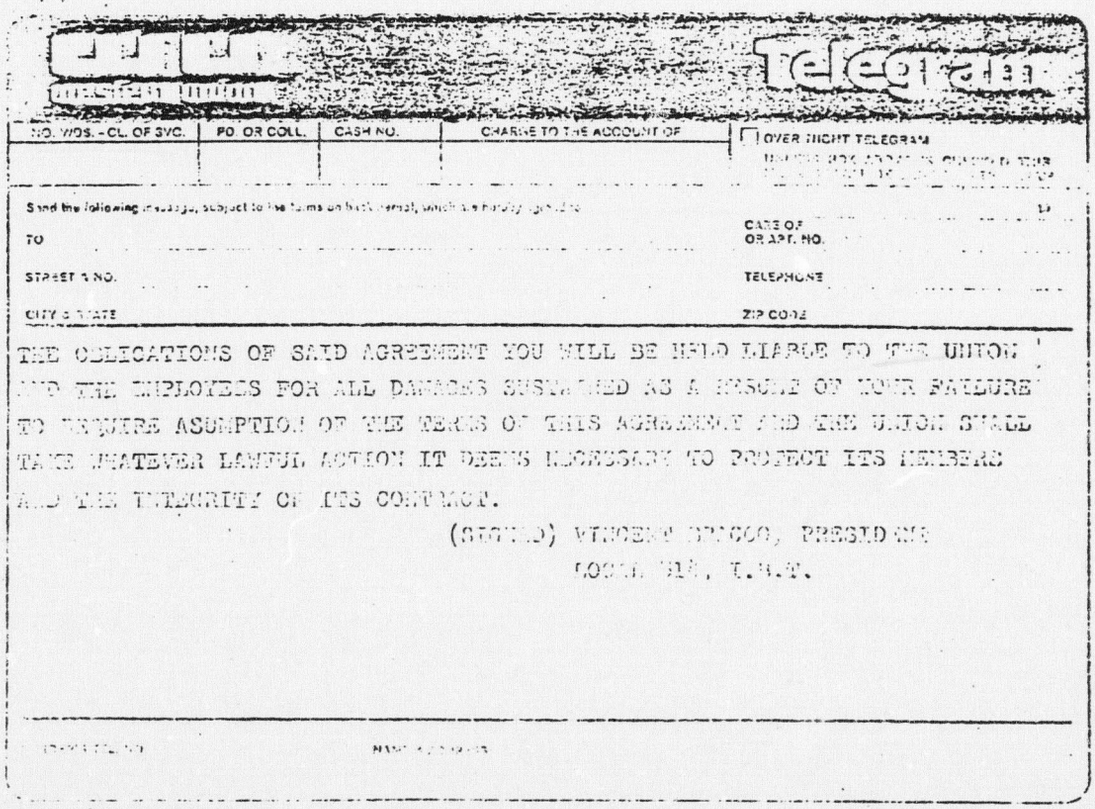
CITY & STATE SYOSSETT, N.Y. 11791

ZIP CODE

WE HAVE LEARNED THAT YOU INTEND TO SELL OR HAVE SOLD YOUR OPERATION TO GOLDEN CYCLE VAN OF NEW YORK, INC. IN ACCORDANCE WITH THE TERMS OF YOUR COLLECTIVE BARGAINING AGREEMENT WITH THIS UNION YOU ARE REQUIRED AMONG OTHER THINGS TO GIVE NOTICE OF EXISTENCE OF THIS AGREEMENT TO GOLDEN CYCLE IN WRITING WITH A COPY OF SAID NOTICE TO BE SERVED UPON THE UNION AND THE EXACT NATURE OF YOUR TRANSACTION WITH GOLDEN CYCLE EXCLUDING FINANCIAL DETAILS. YOU HAVE NOT DONE SO, AND WE DEMAND THAT YOU DO SO IMMEDIATELY. YOU MUST ALSO REQUIRE GOLDEN CYCLE TO ASSUME THE OBLIGATIONS OF SAID AGREEMENT. YOU HAVE NOT DONE SO AND WE DEMAND THAT YOU DO SO IMMEDIATELY. IF YOU FAIL TO REQUIRE GOLDEN CYCLE TO ASSUME

SENDER'S TEL. NO. NAME & ADDRESS

WU 7201 (1-68)



NO. WDS. - CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	OVER NIGHT TELEGRAM

Send the following message, subject to the terms on back hereof, which are hereby agreed to

TO

CARE OF OR APT. NO.

STREET & NO.

TELEPHONE

CITY & STATE

ZIP CODE

THE OBLIGATIONS OF SAID AGREEMENT YOU WILL BE HELD LIABLE TO THE UNION AND THE EMPLOYEES FOR ALL DAMAGES SUSTAINED AS A RESULT OF YOUR FAILURE TO REQUIRE ASUMPTION OF THE TERMS OF THIS AGREEMENT AND THE UNION SHALL TAKE WHATEVER LAWFUL ACTION IT DEEMS NECESSARY TO PROTECT ITS MEMBERS AND THE INTEGRITY OF ITS CONTRACT.

(SIGNED) VINCENT DRAGO, PRESIDENT
LOCAL 816, I.B.T.

SENDER'S TEL. NO. NAME & ADDRESS

GENERAL COUNSEL'S EXHIBIT NO. 9

COHEN, WEISS AND SIMON
COUNSELLORS AT LAW
605 THIRD AVENUE
NEW YORK, N. Y. 10016
MURRAY HILL 2-6077

SAMUEL J. COHEN
HENRY WEISS
BRUCE H. SIMON
STANLEY M. PURMAN
ROBERT S. SAVELSON
EUGENE S. FRIEDMAN
STEPHEN B. MOLDOF
H. REED ELLIS
MICHAEL E. ABRAM

WASHINGTON, D.C. OFFICE
1912 SUNDERLAND PLACE, N.W. 20036
202-785-0985

HENRY WEISS
ROBERT S. SAVELSON

March 26, 1975

David Brodsky, Esq.
Brodsky, Linett & Altman
1776 Broadway
New York, New York 10019

Re: Bader Bros., Inc.

Dispute: Has Bader Bros. violated the contract by failing to give notice of the contract to Golden Cycle Van of New York, Inc. in writing with a copy to the Union, failing to advise the Union of the exact nature of the transaction excluding financial details and by failing to require Golden Cycle to assume the obligations of the contract? If so, what shall the remedy be?

Dear Mr. Brodsky:

I am writing on behalf of Local 814, IBT.

In accordance with the contract, kindly convene a Moving and Storage Labor Management Board promptly to hear and determine the above dispute.

Very truly yours,

Eugene S. Friedman

ESF:BS

CERTIFIED MAIL

cc: Bader Bros.
175 Underhill Blvd.

GENERAL COUNSEL'S EXHIBIT NO. 10

STIPULATION

Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "Union"), by letter dated March 26, 1975, filed a grievance claiming a violation by Bader Brothers Warehouses, Inc. ("Bader") of the 1974-1977 Collective Labor Agreement between the Union and Movers and Warehousemen's Association of Greater New York, Inc. and others (the "Agreement"); and

In lieu of submitting this dispute for final and binding determination to the Moving and Storage Joint Labor-Management Board (the "Joint Board") and/or the Impartial Chairman, as provided by the Agreement, the parties have agreed instead that it shall be submitted to arbitration under the rules and regulations of the American Arbitration Association or to any other forum mutually agreed upon by the parties,

NOW, THEREFORE,

IT IS STIPULATED AND AGREED:

1. The Joint Board and Impartial Chairman hereby divest themselves of any and all powers which they might have had to determine the grievance stated below under the provisions of the Agreement in view of the parties' agreement to substitute the following procedure for determination of the said grievance.

2. The parties submit the following questions for final and binding arbitration under the rules and regulations covering such disputes of the American Arbitration Association:

> Has Bader violated the Agreement, as contended by the Union, by failing to give notice of the Agreement to Golden Cycle Van of New York, Inc. in writing with a

copy to the Union, to advise the Union of the exact nature of the transaction excluding financial details and to require Golden Cycle to assume the obligations of the Agreement?

If so, what remedy authorized by the Agreement shall be granted?

3. The arbitrator shall be selected by the parties in the prescribed manner from lists prepared by the American Arbitration Association or by any other procedure mutually agreed upon by the parties.

4. It is understood that the parties by entering into this stipulation do not intend to waive any argument or defense to which they might have been entitled under the Agreement.

Dated: New York, New York
May 7, 1975

COHEN, WEISS & SIMON
By /s/
Attorneys for Local 814, IBT

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN
By /s/
Attorneys for Bader Bros. Warehouses, Inc.

BRODSKY, LEVETT & ALTMAN
By _____
Attorneys for the Employer Associations under the Agreement

JOINT BOARD
By _____

GENERAL COUNSEL'S EXHIBIT NO. 11

[LETTERHEAD]

May 9, 1975

American Arbitration Association
140 West 51st Street
New York, New York

Re: Local 814, I.B.T. and Bader Brothers Warehouses, Inc.

Dispute: Has Bader violated the Agreement, as contended by the Union, by failing to give notice of the Agreement to Golden Cycle Van of New York, Inc. in writing with a copy to the Union, to advise the Union of the exact nature of the transaction excluding financial details and to require Golden Cycle to assume the obligations of the Agreement? If so, what remedy authorized by the Agreement shall be granted?

Gentlemen:

I am writing to you on behalf of Local 814, I.B.T. In accordance with the agreement between the parties, kindly submit a panel of arbitrators to hear and determine the above dispute.

Very truly yours,

/s/ EUGENE S. FRIEDMAN

Eugene S. Friedman

cc: Stanley Schair, Esq.
Aranow, Brodsky, Bohlinger,
Benetar & Einhorn
469 Fifth Avenue
New York, New York 10017

GENERAL COUNSEL'S EXHIBIT NO. 12

American Arbitration Association

In the Matter of the Arbitration between

Local 814, IBT and Dader Brothers

re: Alleged failure to give notice of the agreement between Uncle Van of N.Y. Inc.

CASE NUMBER: 1210 0864 75

NOTICE OF HEARING

TO:

Cohen, Weiss and Simon
Attorneys for the Union
Att: Eugene S. Friedman, Esq.
505 Third Avenue
New York, New York 10016

Arnow, Brodsky, Dohlinger,
Benetar and Kinborn
Attorneys for the Co.
Att: Stanley Schair, Esq.
469 Fifth Avenue
New York, New York 10017

PLEASE TAKE NOTICE that a Hearing in the above-entitled Arbitration will be held at the Arbitration Tribunal of the American Arbitration Association,

At AAA- 140 West 51st Street, New York, New York 9th Floor

Date July 31, 1975

Hour 10:00 A.M.

Before Dr. Thomas Knowlton

Arbitrator(s)

Please attend promptly with your witnesses and be prepared to present your proofs.

DATED: July 23, 1975

Tribunal Administrator

NOTICE: The Arbitrator(s) have arranged their schedule and reserved the above date to meet the convenience of the Parties. Therefore, every effort should be made to appear on the date scheduled. In the event that unforeseen circumstances make it impossible to attend the hearing as scheduled, the Parties are to request a postponement no less than 48 hours before the time and date set for hearing. All requests for postponements must be communicated to the Tribunal Administrator (not the Arbitrator). There should be no communication between parties and the Arbitrator other than at oral hearings. Any party desiring to have a stenographic record of the testimony taken should make arrangements with the Tribunal Administrator in advance of the hearing.

cc: arbitrator(s)

FORM E-A-7 (10-2-73)

GENERAL COUNSEL'S EXHIBIT NO. 13

LABOR TRIBUNAL (212) 977-2030

AMERICAN ARBITRATION ASSOCIATION 140 WEST 51 STREET, NEW YORK, N.Y. 10020

(212) 977-2000

ROBERT E. MEADE
Director
New York Region

RECEIVED

May 21, 1975

1330 0664 75

Local 814, IBT

and

Bader Brothers

Re: Alleged failure to give notice of the Agreement to Golden Cycle Van of N.Y. Inc.

Cohen, Weiss and Simon
Attorneys for the Union
Att: Eugene S. Friedman, Esq.
605 Third Avenue
New York, New York 10016

Aranow, Brodsky, Bohlinger,
Benetar and Einhorn
Attorneys for the Co.
Att: Stanley Schair, Esq.
469 Fifth Avenue
New York, New York 10017

Gentlemen:

Eugene S. Friedman, Esq., filed with this office on May 12, 1975, a Demand for Arbitration dated May 9, 1975, of a controversy arising out of a collective bargaining contract between the above named Parties containing a clause providing for administration by this Association. We understand that a copy was sent to Respondent. A copy of our Voluntary Labor Arbitration Rules is enclosed herewith.

The attention of respondent is directed to Section 8. If Respondent does not answer within 7 days, we will assume that the claim is denied.

In accordance with Section 12 of the Rules, the Association encloses herewith a list of names selected from our National Panel from which an arbitrator is to be appointed. The list should be returned to this office within 7 days of the date of this letter.

Very truly yours,

Frank T. Zotto
Tribunal Administrator

FTZ:ng
Encl.

G.C. Ex. 13

GENERAL COUNSEL'S EXHIBIT NO. 14

American Arbitration Association

RECEIVED
JUN 18 1975
COHEN WEISS AND SIMON

In the Matter of the Arbitration between

Local 814, IBT and Bader Brothers

Re: Alleged failure togive notice of the Agreement to Golden Cycle Van of N.Y. Inc.

CASE NUMBER: 1330 0664 75

NOTICE OF HEARING

1

TO:

Cohen, Weiss and Simon
Attorneys for the Union
Att: Eugene S. Friedman, Esq.
605 Third Avenue
New York, New York 10016

Aranow, Brodsky, Bohlinger,
Benetar and Einhorn
Attorneys for the Co.
Att: Stanley Schair, Esq.
469 Fifth Avenue
New York, New York 10017

PLEASE TAKE NOTICE that a Hearing in the above-entitled Arbitration will be held at the Arbitration Tribunal of the American Arbitration Association,

At AAA- 140 West 51st Street, New Yokk, N.Y. 9th Floor

Date July 14, 1975

Hour 10:00 A.M.

Before Dr. Thomas Knowlton

Arbitrator(s)

Please attend promptly with your witnesses and be prepared to present your proofs.

DATED: June 17, 1975

Tribunal Administrator
Frank T. Zotto

NOTICE: The Arbitrator(s) have arranged their schedule and reserved the above date to meet the convenience of the Parties. Therefore, every effort should be made to appear on the date scheduled. In the event that unforeseen circumstances mak it impossible to attend the hearing as scheduled, the Parties are to request a postponement no less than 48 hours before the time and date set for hearing. All requests for postponements must be communicated to the Tribunal Administrator (not the Arbitrator). There should be no communication between parties and the Arbitrator other than at oral hearings. Any party desiring to have a stenographic record of the testimony taken should make arrangements with the Tribunal Administrator in advance of the hearing.

cc: arbitrator(s)

FORM 8-AAA-5CM 3-75

[undated]

* * * * *

DECISION

Statement of the Case

PAUL BISGYER, Administrative Law Judge: This consolidated proceeding, with all the parties represented, was heard on September 17 and 18, 1975 in Brooklyn, New York, on the consolidated complaint of the General Counsel issued on August 6, 1975,[1] as amended at the hearing, and the answer of Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondent. In issue is the question whether the Respondent violated Section 8(e) and 8(b)(4)(i) and (ii)(A) and (B) of the National Labor Relations Act, as amended,[2] in its efforts to enforce a provision in a collective-bargaining agreement committing Bader

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[1] The consolidated complaint is based on seperate charges filed in the indicated cases on June 27, 1975, copies of which were duly served on the Respondent by registered mail the same day.

[2] Section 8(b)(4), among other things, makes it an unfair labor practice for a labor organization or its agents,

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
>
> (A) forcing or requiring any employer . . . . to enter into any agreement which is prohibited by section 8(e);
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, ... Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing . . .

Insofar as relevant, Section 8(e) makes it an unfair labor practice

> . . . . for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer

(continued)

Brothers Warehouses, Inc., to require the purchaser of all or part of its moving and storage operations to assume the obligations of such agreement, including the employment of the unit employees. At the close of the hearing, the parties waived oral argument. Thereafter, the General Counsel and the Respondent filed helpful briefs in support of their respective positions.

Upon the entire record, and from my observation of the demeanor of the witnesses, and with due consideration being given to the arguments advanced by the parties, I make the following:

Findings and Conclusions

I. The Business of the Companies Involved

At all material times and until March 26, 1975, Bader Brothers Warehouses, Inc., Bader Brothers Van Lines, Inc., and Bushwick Trailers, Inc.,[3] seperate New York corporations, maintained their principal office and place of business at 475 Underhill Avenue, Syosset, New York.[4] In addition to warehousing facilities, this building, which is owned by Bader Warehouses, contains a furniture repair shop, garage, vehicle repair shop and offices. Prior to March 26, 1975, Bader Warehouses was engaged in the business of local moving and storage of household and other goods and commodities, while Bader Van Lines performed long-distance, interstate moving services under an

---

(continued)

> ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void . . . .

[3] These corporations will be collectively referred to as the Bader Corporations and individually as Bader Warehouses, Bader Van Lines and Bushwick, respectively.

[4] Since March 26, 1975, the Bader enterprises have maintained their principal corporate office at the residence of their president, Herman Bader, in Roslyn, New York, although they continue to occupy some space in the Syosset facility for the purpose of winding up their business affairs.

Interstate Commerce Commission certificate, using drivers supplied by Bader Warehouses and independent owner-operators. During the same period, Bushwick was engaged in the business of buying, selling, leasing trucks, tractors, trailers, and other vehicles. Most of this equipment was leased to Bader Warehouses and Bader Van Lines for use in their moving and storage operations. A small percentage of Bushwick's leasing and sales business was transacted with stranger companies or with independent owner-operators employed in the Bader Van Lines' moving enterprise. Bushwick also operated a vehicle maintenance and repair shop at the Syosset facility which serviced the vehicles utilized by Bader Warehouses and Bader Van Lines in their operations.

It is clear from the record that at all relevant times Bader Warehouses, Bader Van Lines and Bushwick comprised a closely knit, affiliated and integrated business organization under centralized control, having common family ownership, officers and direction. Herman Bader, the president of all three corporations, formulated a common labor policy which Fred Bauer, a relative, administered as the general manager of these corporations. I find, for purposes of the Act, that a single employer relationship existed among the three corporations.

During the year preceding the issuance of the complaint herein on August 6, 1975, Bader Warehouses, in the regular course and conduct of its business operations, derived gross revenue in excess of $500,000, of which more than $50,000 was received for the transportation of household goods and other commodities across state lines. Accordingly, I find that Bader Warehouses individually, and the three above-named corporations as a single integrated employer, at all significant times were engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

Golden Cycle Van and Storage of New York, Inc., herein called Golden Cycle, is a New York corporation engaged in the business of local and interstate

moving and storage of household goods and other commodities and of providing related services at the Syosset facility where it has maintained its principal office and place of business since on or about March 17, 1975. In the regular course of its business operations, Golden Cycle derives gross revenues at a projected annual rate in excess of $500,000 of which more than $50,000 is received from the transportation of household goods and other commodities across state lines. I find that Golden Cycle is an employer engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

II. The Labor Organization Involved

I find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. Introduction; Issues Presented

Since 1952, when the Bader Corporations were created as offshoots of their predecessor, Bader Brothers, Inc., Bader Warehouses and the Respondent have maintained a continuous collective-bargaining relationship with respect to Bader Warehouses' moving and storage employees consisting of chauffeurs, warehousemen, packers, hi-lo operators, checkers and helpers employed at the Syosset facility. Their most recent contract,[5] which has a 3-year term running from April 1, 1974 through March 31, 1977, provides in Article 50, entitled "Parties Bound," the following:

---

[5] This is the same type of contract the Respondent had negotiated with various moving employer-associations which Bader Warehouses independently executed with the Respondent. Bader Warehouses' affiliated corporations, Bader Van Lines and Bushwick, were not parties to this agreement as they did not employ moving or storage employees. Bader Van Lines, however, utilized employees of Bader Warehouses in its long distance operations whenever needed. On those occasions, the employees remained subject to the terms and conditions of employment embodied in the collective-bargaining agreement, pursuant to a verbal understanding between the parties reached in 1971.

B. This Agreement shall also be binding upon the successors, administrators, executors and assigns of the parties either signatory hereto, or who are by membership in an Association as above set forth bound to the terms hereof. In the event an entire operation or part thereof, is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership, or bankruptcy proceeding. such operation or part of an operation shall continue to be subject to the terms and conditions of this Agreement during the term hereof. On the sale, transfer or lease the specific provisions of this Agreement shall prevail. It is understood that the parties hereto shall not use any leasing device to a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc. of the operation covered by this Agreement, or any part thereof. Such notice shall be in writing and a copy served upon the Union at the time the seller, transferor or lessor executes a contract or transaction as herein described. The union shall also be advised of the exact nature of the transaction excluding financial details. In the event the Employer fails to require the purchaser, transferee or lessee to assume the obligations of this Agreement, the Employer shall be liable to the Union, and to the employees covered, for all damages sustained as a result of such failure to require assumption of the terms of this Agreement; but shall not be liable after the purchaser, transferee or lessee has agreed in writing to assume the obligation of this Agreement.

A related clause in Article 21 H of the contract dealing with seniority provides, in pertinent part, that

> Whenever one company is abosrbed by, merged with, purchased or acquired in any manner by another company, the employees of both companies shall be integrated into one Seniority List by their dates of original employment . . . .

Charles Martelli, the Respondent's secretary-treasurer, credibly testified that Article 50 B was first negotiated and embodied in the bargaining contract in 1965 to assure the continuity in employment of the unit employees of a company taken over by another.

It was the Respondent's attempt to enforce rights it claimed under Article 50 B that gave rise to the unfair labor practice charges herein. As will be discussed later in greater detail, the Bader Corporations decided, among other things, to terminate their moving and storage operations. Accordingly, in September 1974 they entered into a contract with Greyhound Van Lines, Inc., for the sale of most of their rolling stock and other physical assets and equipment used in the moving and storage business. In addition, Bader Warehouses, as owner, executed a 10-year lease to Greyhound of the Syosset facility. By March 25, 1975, the transfer of assets and the occupation of the Syosset facility were completed. At that time, Golden Cycle, a recently created subsidiary of Greyhound or of the latter's parent organization, commenced the moving and storage business at the Syosset facility with the purchased assets. Bader Warehouses, for its part, simultaneously terminated its operations and the employment of its employees covered by the above bargaining contract.[6] Admittedly, Bader Warehouses did not require Golden Cycle to assume the obligations of its bargaining contract with the Respondent,

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[6] Bader Van Lines also discontinued its long-distance moving operations, as did Bushwick in terminating various aspects of its operations.

nor did Golden Cycle voluntarily agree to do so, despite the Respondent's demands and warning that it would take whatever lawful action was necessary to protect its members and the integrity of that contract.

As a consequence, on March 26, 1975, the Respondent began picketing the Syosset facility with signs stating that it was on strike against Golden Cycle and Bader Brothers. On the same day, the Respondent, acting pursuant to the bargaining agreement, requested the Moving and Storage Joint Labor-Management Board to hear and determine its dispute with Bader Brothers over the latter's violation of the bargaining contract in not requiring Golden Cycle to assume the obligation thereunder. Subsequently, the Respondent and Bader Warehouses agreed to bypass the Joint Board and submit their dispute to arbitration in accordance with the rules and regulations of the American Arbitration Association. Although an arbitrator has been designated, further arbitration proceedings have been suspended because of the pendency in a United States District Court of the General Counsel's petition for a temporary injunction under Section 10(1) of the Act. For the same reason, picketing also ceased on July 25.

As indicated above, the amended complaint alleges that the Respondent's efforts to secure compliance by Bader Warehouses with Article 50 B of the bargaining contract and to achieve Golden Cycle's assumption of the obligations of that contract violated Sections 8(e) and 8(b)(4)(i) and (ii)(A) and (B) of the Act. Since there is no question concerning the Respondent's actions to accomplish those ends, the critical issues to be resolved are threefold. One is whether Article 50 B is the type of a so-called "hot cargo" clause which contemplates a secondary boycott prohibited by Section 8(e), as the General Counsel contends it is, or whether it is a valid work preservation clause designed to save the jobs of unit employees and therefore is primary in nature and permissible under the Act, as the Respondent urges it is. The second

question is whether the sale of capital assets and the leasing of property involved in the termination of Bader Warehouses' moving and storage business constitute "doing business" within the meaning of Section 8(e) of the Act and fall within the protective scope of that provision. The final question presented is whether the Respondent's picketing in part, directed against Golden Cycle, is a form of secondary activity prohibited by Section 8(b)(4)(B) of the Act. Focusing our attention on these critical issues, we turn to the evidence.

B. The Evidence

1. The sale of the physical assets of the Bader Corporations and the leasing of the Syosset facility; the termination of the moving and storage operations

As indicated above, the three Bader Corporations comprise a single, integrated business enterprise. Prior to March 25, 1975, Bader Warehouses furnished local moving and storage services; Bader Van Lines performed the long-distance moving, using Bader Warehouses' employees or independent owner-operators; and Bushwick purchased new and used tractors, trailers, trucks, and other rolling equipment which it leased to its affiliated companies for their moving and storage operations, although it also sold or leased such equipment on a much smaller scale to stranger companies or independent owner-operators employed by Bader Van Lines. Bushwick also operated the vehicle repair shop located at the Syosset facility, where the tractors, trailers and trucks utilized by Bader Warehouses and Bader Van Lines in their operations were serviced. The Syosset warehouse, which the Bader Corporations occupied, and the adjoining property are owned by Bader Warehouses.

Before September 1974, the Bader Corporations decided to terminate their moving and storage business, as well as their related operations, and

to dispose of their assets. Accordingly, on that date, following a series of negotiations with Greyhound Van Lines, Inc.,[7] the Bader Corporations and Greyhound concluded an agreement for the sale to Greyhound of most of the rolling stock and other physical assets and equipment used in the moving and storage operations, such as, tractors, trailers, trucks and other vehicles, and warehouse, office, furniture repair equipment. Excluded from the sale, however, were the Bader Corporations' good will, trade names, customer lists, accounts receivable, Federal and State certificates authorizing the conduct of local and interstate transportation operations, some lots of unclaimed household furniture, approximately six tractors or trailers and several personal cars.[8] As part of this transaction, Bader Warehouses, as owner, leased to Greyhound for a 10-year period its Syosset building, which housed the warehousing, furniture repair, vehicle repair,[9] garage and other facilities, and a portion of adjoining real property.

The transfer of the sold assets and leased premises was thereafter effected on a gradual basis until its completion on March 25, 1975. In the meantime,

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[7] There is evidence that, before the Greyhound negotiations, similar negotiations were held with Pan-American Van Lines, Inc., in the winter of 1973 and early spring of 1974 which did not materialize. It also appears that Bader Warehouses had previously sold an auxiliary warehouse in Brooklyn, New York, to Coventry Van Co. and the four Bader employees there employed continued working for the new owner.

[8] It appears that the local transportation certificates were subsequently sold to another company and that the Interstate Commerce Commission certificate was in the process of being sold at the time of the hearing in this case. There is also testimony that at the time of the Greyhound transaction the six tractors or trailers were located in Atlanta, Georgia; that one of them was sold to American Security Van Lines in late 1974 or early 1975; and that the remaining five pieces of equipment were in American Security's possession under a lease arrangement since the beginning of 1974. The personal cars, which are also owned by Bushwick, have not yet been disposed of.

[9] As a consequence, Bushwick subsequently discontinued operating the vehicle repair shop.

Golden Cycle was formed and incorporated in February 1975 as a subsidiary of Greyhound or the latter's parent organization to conduct the Syosset moving and storage operations. On March 17, 1975 Golden Cycle took possession of the assets and the Syosset facility and began recruiting help. As of the date of the hearing in this case, Golden Cycle had hired some 15 employees to perform moving and storage work. Its business comes directly from the public or referral by affiliated companies.

During the period preceding the termination of its moving and storage business, Bader Warehouses and Bader Van Lines notified its customers of their intentions to discontinue those operations. On March 17, 1975, Fred Bauer, the general manager of the Bader Corporation, met with the employees who were at work that day. These employees were among the nine men included on the then current seniority list Bader Warehouses maintained.[10] Bauer told the assembled employees that Bader was going out of the moving and storage business for economic reasons and that the two moving jobs which were then in progress would be the last performed.

Thereafter, on March 25, Bader Corporations terminated their moving and storage operations and discharged their nine bargaining unit employees. However, the Bader Corporations continued to occupy space at the Syosset facility for the sole purpose of winding up their affairs, retaining Bauer and an office employee to handle such matters. The executive offices were also

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10 Bader Warehouses maintained this list pursuant to the terms of its collective-bargaining agreement with the Respondent. Employees were eligible for a position on this list after completion of 30 working days in any 90-day working period. This list, which was arranged by job classification and seniority, was used for assigning employees to household moving and storage jobs. A straight payroll seniority list was used for commerical moving assignments. No employee could be hired before the applicable list was first exhausted. Although the contract provides that prior to hiring anyone not on the seniority list the "Union shall be notified and given the opportunity to refer applicants on a nondiscriminatory basis" (Article 10, paragraph P 1), the Respondent does not operate a formal hiring hall.

On the same day, March 20, the Respondent's president, Vincent Bracco, sent the following telegram to Bader Bros., Inc:

> We have learned that you intend to sell or have sold your operation to Golden Cycle Van of New York, Inc. In accordance with the terms of our collective bargaining agreement with this Union you are required among other things to give notice of existence of this agreement to Golden Cycle in writing with a copy of said notice to be served upon the union and the exact nature of your transaction with Golden Cycle excluding financial details. You have not done so, and we demand that you do so immediately. You must also require Golden Cycle to assume the obligations of said agreement. You have not done so and we demand that you do so immediately. If you fail to require Golden Cycle to assume the obligations of said agreement you will be held liable to the Union and the employees for all damages sustained as a result of your failure to require assumption of the terms of this agreement and the Union shall take whatever lawful action it deems necessary to protect its members and the integrity of its contract.

To Golden Cycle, the Respondent's president sent this telegram:

> We understand you are purchasing and taking over the operation of Bader Bros., Inc. This Union has a collective bargaining agreement with Bader Bros., Inc. covering the operation you are purchasing and taking over. Pursuant to Article 50 of said agreement entitled, Parties Bound, we demand that you agree in writing to assume the obligations

of said agreement. Please notify the undersigned promptly in writing that you assume the obligations of said agreement. Your failure to do so will compel the Union to take whatever lawful action is necessary to protect our members and the integrity of out contract.

On March 25, Herman Bader advised the Respondent that he was turning over the telegram directed to him to Golden Cycle. The next day, the Respondent received a letter from Golden Cycle to the effect that it was not profitable for it to abide by the bargaining contract because Golden Cycle's operations would be different from Bader's.

3. Picketing at the Syosset facility; the institution of arbitration proceedings

Not having succeeded in its efforts to secure Bader Warehouses' compliance with its commitment in Article 50 B of their bargaining contract to require Golden Cycle to assume those contractual obligations or to persuade Golden Cycle voluntarily to assume those obligations. the Respondent on March 26, 1975 established a picket line on the sidewalk in front of the Syossett facility. According to Charles Martelli, the Respondent's secretary-treasurer, the Respondent took this action to protest Bader Warehouses' violation of its agreement, and Golden Cycle's refusal to assume the contractual obligations and to retain the unit employees in its employ. The picketing was conducted peacefully by the discharged employees of Bader Warehouses and other members of the Respondent. The number of pickets varied between one and eight and on certain days none appeared at all. The signs carried by the pickets bore the following legend:

Local 814, I.B. of T. on strike against Golden Cycle Vans, of New York, Inc. and Bader Brothers. No dispute with any other employer."

Picketing continued until July 25, 1975 when it was suspended during the pendency of proceedings in a United States District Court initiated by the General Counsel for a Section 10(1) injunction.

By letter dated March 26, 1975, the Respondent requested the Moving and Storage Joint Labor-Management Board, the forum established in the parties' bargaining contract to hear and resolve contractual disputes, to consider the Respondent's dispute with Bader Warehouses over the latter's failure to comply with Article 50 B and to determine the remedy. Admittedly, the Respondent, among other things, sought damages it and the unit employees sustained. At a subsequent meeting of the Joint Board, the Respondent and Bader Warehouses, at the Respondent's request, entered into a written stipulation dated May 7, 1975, whereby they agreed to bypass the Joint Board and submit their dispute to arbitration conducted under the auspices of the American Arbitration Association. Thereafter, pursuant to the stipulation, arbitration proceedings were instituted and an arbitrator was selected. Although a hearing before the arbitrator was scheduled for July 14, 1975, no testimony on the merits has been taken and the arbitration proceedings are apparently still pending. In the meantime, on June 27, 1975, Bader Warehouses filed the unfair labor practice charges in the present case.

C. Analysis; Concluding Findings

Basic to a determination whether the Respondent violated Section 8(e) and 8(b)(4)(i) and (ii)(A) and (B), as alleged in the amended complaint, is the question of the validity of Article 50 B of its collective-bargaining contract with Bader Warehouses. As shown above, Article 50 B committed Bader to require a purchaser of its operations or any part to assume the obligations of the bargaining contract, which undeniably included the retention in the purchaser's employ of the unit employees of Bader Warehouses on the established seniority list. This clause also provided for the payment by Bader

Warehouses of damages sustained by the Respondent and the covered employees if Bader Warehouses failed to require the purchaser to assume the contractual obligations. The General Counsel contends that, since Bader Warehouses was thus precluded from doing business with a purchaser who was unwilling to assume the bargaining contract, the Respondent's attempted enforcement violated the indicated sections of the Act. The Respondent, on the other hand, insists that Article 50 B is essentially a valid work preservation clause not encompassed by the proscription of Section 8(e).[12]

Section 8(e), in pertinent part, makes it an unfair labor practice for any labor organization and any employer "to enter into any contract or agreement . . . whereby such employer ceases or refrains or agrees . . . to cease doing business with any other person, and any contract or agreement entered into . . . containing such an agreement shall be to such extent unenforceable and void . . . ." In *National Woodwork,*[13] the Supreme Court held that a contract clause designed to protect and preserve work customarily performed by employees in the bargaining unit was primary in nature and therefore not prohibited by Section 8(e). From its review of legislative history, the Court observed (635) that "[a]lthough the language of S. 8(e) is sweeping, it closely tracks that of S. 8(b)(4)(A), and just as the latter and its successor S. 8(b)(4)(B) did not reach employees' activity to pressure their employer to preserve for themselves work traditionally done by them, S. 8(e) does not

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[12] Preliminarily, it is noted that, although the 6-month limitation period prescribed in Section 10(b) of the Act, precludes the issuance of a complaint based on the execution of the bargaining agreement here involved, there is no question that the Respondent's attempted enforcement of Article 50 B, is, under settled law, tantamount to a reaffirmance of, and therefore an entering into, that agreement as that term "to enter" is used in Section 8(e). *International Organization of Masters, Mates and Pilots, AFL-CIO (Seatrain Lines, Inc.),* 220 NLRB No. 52, JD 19; *Milk Drivers and Dairy Employees, Local Union No. 537 (Sealtest Foods),* 147 NLRB 230, 231.

[13] *National Woodwork Manufacturers Association v. N.L.R.B.*, 386 U.S. 612.

moved to President Herman Bader's residence. Whatever ultimate use is to be made of the corporate structure of the Bader Corporations, Bader made it clear that he had no intention of resuming the moving and storage operations.

2. Bader Warehouses' breach of Article 50 B of its bargaining contract; the Respondent's efforts to secure compliance by Bader Warehouses and the assumption of contractual obligations by Golden Cycle

It is undisputed that Bader Warehouses did not require Golden Cycle to assume the obligations of Bader Warehouses' bargaining contract with the Respondent as therein provided in Article 50 B, quoted above; nor did Golden Cycle voluntarily assume those obligations. Moreover, although the Respondent probably became aware of the Greyhound transaction shortly after its consummation in September 1974,[11] it is clear that no written notification prescribed in the bargaining contract was ever given to it.

On or about February 21, 1975, the Respondent's Business Agent Denetra requested General Manager Bauer to arrange a meeting for him with President Herman Bader to discuss the Greyhound matter. No such meeting, however, was held. Thereafter, on March 18, following Bauer's notification to the employees of the scheduled termination of Bader's moving and storage business and their discharge effective on March 25, Philip Doran, another business agent of the Respondent, visited Bauer at his office. In answer to Doran's inquiries, Bauer informed him that the Bader Corporations were

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[11] According to Bauer's uncontradicted and credited testimony, the Greyhound sales transaction was reported in the Wall Street Journal about September 14, 1974, at which time he confirmed the report to employee Worden, a member of the Respondent, who questioned him about it. Bauer also testified that he further advised Worden that it was premature to go into any details. There is additional credible testimony by President Herman Bader that the following November the Respondent's Business Agent Denetra requested an appointment with him to discuss the Company's business arrangements with Greyhound but that such a meeting was never scheduled.

discontinuing their moving and storage operations; that he had notified the employees of this decision the day before; and that he was in the process of winding up this business.

On March 19, Doran returned to the Syosset facility where Bauer introduced him to William Cross, the manager of Golden Cycle, and James Deuel, the division manager of Smyth Greyhound, an affiliated organization. Doran questioned Cross and Deuel concerning their operation and was informed that Golden Cycle had purchased assets from Bader and rented the facility where it would be engaged in the moving and storage business. Stating that he did not feel well, Doran asked to continue their conversation at another time and Cross agreed. On his departure, Doran handed Cross a copy of the Respondent's standard contract to which Bader Warehouses was a party and suggested that Cross read it.

The next day, Doran and Denetra visited Cross and Deuel. The business agents asked Cross and Deuel whether they would accept the Respondent's existing contract with Bader Warehouses. Instead of replying directly, Cross and Deuel indicated that Golden Cycle's operations might be different from Bader's and briefly went into some details. When Doran and Denetra repeated their inquiry about signing the contract, Cross and Deuel answered that they lacked the power to do so on their own, adding that the contract was not designed for the type of business Golden Cycle contemplated engaging in and proposed that a compromise be worked out more suitable to their needs. Doran rejected the idea. At one point in the conversation, Deuel expressed his disapproval of some of the Respondent's work rules. Before Doran and Denetra departed, they asked whether Golden Cycle would employ the moving and storage employees of Bader Warehouses and Cross responded that he would accept employment applications from them, as well as from other individuals, and that he would hire those persons who fit Golden Cycle's requirements.

prohibit agreements made and maintained for that purpose." To determine whether a particular contract clause violates Section 8(e), the Court continued (644), requires an inquiry into "whether, under all the surrounding circumstances, the Union's objective was preservation of work for . . . [unit] employees [which would be primary and therefore permissible], or whether the agreements . . . were tactically calculated to satisfy union objectives elsewhere," which would be secondary and unlawful. Otherwise stated (645), the "touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees."

Applying these tests to the facts of the instant case, I find that Article 50 B has as its objective the protection and preservation of the jobs of unit employees in the event Bader Warehouses disposed of all or part of its moving and storage operations. There is absolutely nothing in the clause or in the record indicating that the clause is aimed at fostering the Union's own organizational interests distinct from the unit employees' job security, which certainly is within the area of proper union concern. In these circumstances, I find that Article 50 B, addressed, as it is, to the labor relations of Bader Warehouses with respect to its own employees and not being "tactically calculated to satisfy union objectives elsewhere," is a legitimate work preservation provision, having a primary objective to save the jobs of unit employees jeopardized by the sale of the Bader Warehouses' operations, which Section 8(e) of the Act does not reach. In this respect, the decisions in *Commerce Tankers,*[14] and *Seatrain,*[15] relied upon by the General Counsel to support a contrary result, are clearly inapplicable. In neither case was the disputed clause intended to protect or preserve the jobs of unit employees holding them. In *Commerce Tankers,* it was the union's practice for the seamen who manned the ship to leave it when it was sold and to be replaced by

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14 *National Maritime Union of America, AFL-CIO (Commerce Tankers Corporation),* 196 NLRB 1100, enfd. 486 F.2d 907 (C.A. 2).

15 *Supra.*

other seamen referred from the union's hiring hall. In *Seatrain*, the vessel was newly built and until it was sold, it never had a crew whose jobs needed protection. It thus appears that, unlike the situation in the case at bar, the disputed clauses in the cited cases had an unlawful secondary objective to advance the union's own organizational goals to promote jobs with other employers for their membership as a whole through their hiring halls.[16]

The General Counsel, nevertheless, argues that Article 50 B, in addition to protecting the jobs and economic interests of the employees of Bader Warehouses, requires the purchaser to assume noneconomic obligations such as union recognition. From this premise, the General Counsel reasons that Article 50 B is similar to a union signatory subcontracting agreement which permits the employer to subcontract work only to other employers who agree to recognize the union as the bargaining representative of their employees. Since such an agreement concededly violates Section 8(e), the General Counsel concluded that Article 50 B is similarly unlawful. I find the analogy untenable and the contention without merit.

In the first place, the subcontracting of work, by hypothesis, is not concerned with the preservation of work for unit employees[17] and therefore the situation is clearly not analogous to the one in the present case.[18] Secondly, the fact that the purchaser's assumption of the Bader Warehouses'

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16 Also distinguishable from the present case is *Sealtest Foods, supra*, cited by the General Counsel, where the Board found violative of Section 8(e), a clause in a contract restricting the sale of distribution routes only to those individuals whose route drivers servicing the routes will come under the provisions of the seller's bargaining contract with the union. Manifestly, the disputed clause was not designed to preserve jobs for the seller's employees.

17 Cf. *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203.

18 For this reason, *Local 437, International Brotherhood of Electrical Workers, AFL-CIO (Dimeo Construction Co.)*, 180 NLRB 420; and *Building Material & Construction Teamsters Union Local No. 216 (Bigge Drayage Company)*, 198 NLRB No. 130, enfd. September 29, 1975 ___ F.2d___(C.A.D.C.), relied upon by the General Counsel, are distinguishable.

bargaining agreement would require him to recognize the Respondent does not inevitably establish the invalidity of Article 50 B. This is so because, if the purchaser were to retain in its employ the unit employees of Bader Warehouses, all of whom are members of the Respondent, he might well become, as the successor, the employing industry duty-bound under the Act to recognize the Respondent as the exclusive representative of his employees in an appropriate unit. [19] In any event, it can hardly be contended that if a purchaser, pursuant to the bargaining contract between Bader Warehouses and the Respondent, assumed the contractual obligations, including the retention of unit employees and recognition of the Respondent, it would be in violation of the Act. Indeed, in *Burns, supra,* the Supreme Court held that a successor-employer was not bound by the substantive provisions of a bargaining agreement negotiated by its predecessor with the union only because it had not voluntarily agreed to or assumed the contract. Moreover, it is beyond question that successor clauses of the type here involved which, among other things, assure employees job security and continuing benefits, are appropriate and vital subjects for collective bargaining and are frequently embodied in negotiated agreements.[20] As the Supreme Court so aptly noted,[21] "It would therefore be uncongruous to interpret S. 8(e) to invalidate clauses over which the parties may be mandated to bargain and which have been successfully incorporated through collective bargaining in many of the Nation's major labor agreements."

In summary, I find that Article 50 B of the Respondent's bargaining contract is a legitimate work preservation clause designed to assure unit employees continued employment, which does not contravene Section 8(e)

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19 Cf. *N.L.R.B.* v. *Burns International Security Services, Inc.,* 406 U.S. 272.

20 *National Woodwork Manufacturers Association* v. *N.L.R.B.,* 386 U.S. 612, 642; *Fibreboard Paper Prods. Corp., supra.*

21 *National Woodwork, supra,* 643.

of the Act.[22] It follows that neither this provision nor Section 8(b)(4)(i) and (ii)(A) was violated by the Respondent's reaffirmation of that clause and the Respondent's efforts to enforce it. To be specific, neither of these statutory provisions was violated by the Respondent's demands that Bader Warehouses require Golden Cycle, the purchaser of the physical assets and lessee of the Syosset warehouse facility, to assume the contractual obligations, including the employment of Bader Warehouses' unit employees; by the Respondent's picketing of Bader Warehouses to achieve compliance with Article 50 B and the employment of unit employees; and by submitting the dispute to arbitration to vindicate asserted contractual rights.

Turning to the alleged violation of Section 8(b)(4)(i) and (ii)(B) of the Act, the theory of the amended complaint is that, in furtherance of its dispute with Bader Warehouses, the primary employer, the Respondent picketed and made demands upon Golden Cycle, a neutral employer, with an object of forcing or requiring Golden Cycle to cease doing business with Bader Warehouses. I find this theory very imaginative but untenable. Since the Respondent's dispute with Bader Warehouses stems from the latter's failure

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[22] In view of this determination, it is uncessary to consider the still unsettled question raised by the Respondent whether the sale of capital assets and the leasing of business property in connection with the liquidation and termination of the seller's operations constitute "doing business" within the meaning of Section 8(e). In *Commerce Tankers, supra*, 196 NLRB at 1101, the Board reserved that question with respect to industries other than the maritime industry. The Second Circuit, in affirming the Board in that case, expressed doubt that "an isolated sale of a capital item such as a ship comes within this language" of "doing business" in Section 8(e). However, the Court did not consider the point because the NMU attorney disclaimed reliance on it. 486 F.2d at 911. Contrary to the General Counsel's assertion, the Board did not decide the question noted in this footnote in *Milk Drivers and Dairy Employees, Local Union No. 537 (Sealtest Foods)*, 147 NLRB 230. In that case, the employer did not go out of business but only changed its method of distributing its products. Cf. *International Union of Operating Engineers, Local No. 701, AFL-CIO (Cascade Employers Association, Inc.)*, 221 NLRB No. 124.

to require Golden Cycle to assume the contractual obligations as provided in Article 50 B, the General Counsel is, in effect, contending that the Respondent's conduct was aimed at forcing Golden Cycle to put pressure on Bader Warehouses to yield to the Respondent's demands, namely, to require Golden Cycle to assume the contractual obligations. Manifestly, this is unrealistic for, had Golden Cycle assumed those obligations, there would be no occasion for the Respondent to seek compliance by Bader Warehouses of its contractual commitment. In my opinion, the more plausible explanation for the picketing of Golden Cycle at the Syosset facility, which Bader Warehouses also occupied for the purpose of winding up its affiars, is, as the Respondent urges, that it was similariy involved in a primary dispute with Golden Cycle because of its refusal to assume the obligations of the bargaining contract and to employ the terminated unit employees of Bader Warehouses. By picketing in furtherance of this objective, the Respondent "was not extending its activity to a front remote from the immediate dispute but to one intimately and indeed inextricably united to it."[23] Accordingly, I find that the Respondent's picketing of Golden Cycle contemporaneously with Bader Warehouses did not constitute secondary boycott activity Section 8(b)(4)(B) of the Act was intended to reach, whatever other unfair labor practice might have been committed.[24]

Having found that the General Counsel has failed to sustain any of the alleged violations, the amended consolidated complaint will be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

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[23] *Douds* v. *Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231*, 75 F. Supp. 672, 677 (D.C.S.D.N.Y.), a case involving the so-called "ally doctrine" not here applicable.

[24] Perhaps the picketing might have run afoul of Section 8(b)(7) of the Act to secure recognition or bargaining rights but such unfair labor practice was not charged and I therefore do not pass judgment of it.

Conclusions of Law

1. Bader Warehouses, the Bader Corporations and Golden Cycle are employers engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in the unfair labor practices alleged in the amended consolidated complaint.

RECOMMENDED ORDER [25]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, as amended,

IT IS ORDERED that the amended consolidated complaint issued herein against the Respondent, Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be, and it hereby is, dismissed in its entirety.

Dated, Washington, D.C.

/s/ Paul Bisgyer
Paul Bisgyer
Administrative Law Judge

[25] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[dated February 4, 1976]

* * * * *

MEMORANDUM AND ORDER

COSTANTINO, D. J.

Petitioner, Director of Region 29 of the National Labor Relations Board, contends that he has reasonable cause to believe that respondent union local has engaged in certain unfair labor practices. He applies for injunctive relief. In a decision dated January 28, 1976, Judge Paul Bisgyer of the National Labor Relations Board held that respondent did not engage in the unfair labor practices charged by petitioner. After a review of this decision and the entire record, this court must conclude that petitioner does not have reasonable cause to believe that respondent has engaged in the charged unfair labor practices. Accordingly, the application for injunctive relief is denied.

So ordered.

/s/ Signature illegible

U.S.D.J.

United States Court of Appeals

FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellant,

v.

LOCAL 814, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent-Appellee.

No. 76-6052

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) copies of the Appendix in the above-entitled case, on the following counsel of record, this 17 day of May 1976.

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